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Cumulative Supplement to

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Immigration and Nationality Act Annotated

Fourth Edition

WITH RULES AND REGULATIONS

By

SIDNEY KANSAS

- Since the publication of the 1955 Supplement, a great many changes have been made in the rules and regulations and about twenty new sections have been added to the Act.
- This supplement, together with the parent book, contains all the immigration and nationality laws now in force, with all the rules and regulations complete, revised and up-to-date. It also contains the departmental regulations of the Visa Office of the Department of State, governing the issuance of visas by the American Consuls abroad.
- New matter not contained in the parent book is indexed in the front of this supplement.

This cumulative supplement brings the parent book,
IMMIGRATION AND NATIONALITY ACT with
RULES AND REGULATIONS, up-to-date and
replaces the 1955 Supplement

DENNIS & CO., INC.
LAW Book PUBLISHERS
 BUFFALO 3, N. Y.

1954-1959

Cumulative Supplement

to

Fourth Edition

of

**IMMIGRATION AND
NATIONALITY ACT**

**ANNOTATED
WITH RULES AND
REGULATIONS**

By

SIDNEY KANSAS
of the New York Bar

**DENNIS & CO., INC.
LAW BOOK PUBLISHERS
BUFFALO 3, N. Y.**

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P R E F A C E

This cumulative supplement brings the parent book, IMMIGRATION and NATIONALITY ACT with RULES AND REGULATIONS, up to date and replaces the 1955 supplement.

Since the publication of the 1955 supplement, a great many changes have been made in the rules and regulations and about twenty new sections have been added to the Act. This work incorporates the recent amendments to the Act and the many changes in, and amendments to, the regulations up to December 10, 1958. The printing of this supplement was held back in order that it might contain the changes and amendments that were being prepared in the Office of the Commissioner of Immigration and Naturalization, and which were not completed until the end of November 1958. This additional last-minute material greatly increased the number of pages.

This supplement, together with the parent book, contain all the immigration and nationality laws now in force, with all the rules and regulations complete, revised and up to date. They also contain the departmental regulations of the Visa Office of the Department of State, governing the issuance of visas by the American Consuls abroad.

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The numbers in bold type refer to the page numbers in the parent book.

SIDNEY KANSAS

New York, N. Y.
December 10, 1958

INDEX

NEW MATTER NOT CONTAINED IN THE PARENT BOOK

	PAGE
Part 44—	
Documentation of Immigrants Under Section 15 of the Act of September 11, 1957	321
Part 46—	
Control of Aliens Departing From the United States	326
Part 50—	
Nationality Procedures Under the Immigration and Nationality Act	333
Part 51—	
Limitation on Issuance of Passports to Persons Supporting Communist Movement. Board of Passport Appeals	353
Part 52—	
Births and Marriages Recorded by American Con- sular Offices Abroad	356
Part 53—	
Travel Control of Citizens and Nationals in Time of War or National Emergency	357
Part 214K—	
Admission of Agricultural Workers Under Special Legislation. Amending Part 475, Page 515	360
Public Law 85-892—	
For the Relief of Certain Distressed Aliens	366

IMMIGRATION AND NATIONALITY ACT

Page 51

ADJUSTMENT OF STATUS FOR PERMANENT RESIDENCE

Section 101. (a) Any alien admitted to the United States as a non-immigrant under the provisions of either section 101 (a) (15) (A) (i) or (ii) or 101 (a) (15) (G) (i) or (ii) of the Immigration and Nationality Act, who has failed to maintain a status under any of those provisions, may apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.

(b) If, after consultation with the Secretary of State, it shall appear to the satisfaction of the Attorney General that the alien is a person of good moral character, that he is admissible for permanent residence under the Immigration and Nationality Act, and that such action would not be contrary to the national welfare, safety, or security, the Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date of the order of the Attorney General approving the application for adjustment of status is made.

(c) A complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such adjustment of status. Such reports shall be submitted on the first day of each calendar month in which Congress is in session. If, during the session of Congress at which a case is reported, or prior to the close of the session of Congress next following the session at which a case is reported, either the Senate or the House of Representatives passes a resolution stating in substance that it does not favor the adjustment of status of such alien, the Attorney General shall thereupon require the departure of such alien in the manner provided by law. If neither the Senate nor the House of Representatives passes such a resolution within the time above specified, the Secretary of State shall, if the alien was classifiable as a quota immigrant at the time of his entry, reduce by one the quota of the quota area to which the alien is chargeable under section 202 of the Immigration and Nationality Act for the fiscal year then current or the next following year in which a quota is available. No quota shall be so reduced by more than 50 percent in any fiscal year.

(d) The number of aliens who may be granted the status of aliens lawfully admitted for permanent residence in any fiscal year, pursuant to this section, shall not exceed 50.

IMMIGRATION AND NATIONALITY ACT

Page 56

DEFINITION OF "CHILD"

Section 101 (b) (1). The term "child" means an unmarried person under twenty-one years of age who is a legitimate child or,

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of 18 years at the time the marriage creating the status of stepchild occurred.

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside of the United States, if such legitimation takes place before the child reaches the age of 18 years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation.

(D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother.

(E) a child adopted while under the age of 14 years, if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least 2 years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

Page 60

POWERS AND DUTIES OF SECRETARY OF STATE

By virtue of the authority vested in me by section 4 of the act of May 26, 1949 (63 Stat. 111; 5 U. S. C. 151c), it is hereby provided as follows:

(1) Under the general direction of the Secretary of State and subject to the limitations contained in section 104 of the Immigration and Nationality Act (66 Stat. 174; 8 U. S. C. 1104) the Administrator of the Bureau of Security, Consular Affairs and Personnel of the Department of State shall be charged with the administration and enforcement of the Immigration and Nationality Act and all other immigration and nationality laws relating to the powers, duties and functions of diplomatic and consular officers of the United States, including the authority to establish such regulations; prescribe such forms of reports, entries and other papers, issue such instruments; and to perform such other acts as he deems necessary for carrying out the provisions of the Immigration and Nationality Act and all other immigration and nationality laws relating to the powers, duties and functions of diplomatic and consular officers of the United States.

SUPPLEMENT

(2) There are hereby excluded from the authority delegated under paragraph (1) of this order: (a) The powers, duties and functions conferred upon consular officers relating to the granting or refusal of visas; (b) the powers, duties and functions conferred upon the Secretary of State by delegation from the President of the United States; and (c) the powers, duties and functions conferred jointly upon the Secretary of State and the Attorney General.

(3) The authority delegated under paragraph (1) of this order shall not be deemed to include the authority to redelegate the powers, duties and functions so delegated.

(4) This order shall take effect as of the date hereof.

Dated: November 27, 1953.

[SEAL]

JOHN FOSTER DULLES,
Secretary of State.

Page 67

NONQUOTA VISAS FOR ELIGIBLE ORPHANS

Section 203 (a) (1) of the Immigration and Nationality Act is amended by striking out "him." and inserting in lieu thereof the following: "or following to join him." ["him" is the last word of paragraph (a) (1)]

(5) On or before June 30, 1959, special nonquota immigrant visas may be issued to eligible orphans as defined in this section who are under 14 years of age at the time the visa is issued. Not more than two such special nonquota immigrant visas may be issued to eligible orphans adopted or to be adopted by any one United States citizen and spouse, unless necessary to prevent the separation of brothers or sisters.

(6) When used in this section, the term "eligible orphan" shall mean an alien child (1) who is an orphan because of the death or disappearance of both parents, or because of abandonment or desertion by, or separation or loss from, both parents, or who has only one parent due to the death or disappearance of, abandonment, or desertion by, or separation or loss from the other parent and the remaining parent is incapable of providing care for such orphan and has in writing irrevocably released him for emigration and adoption; (2) (A) who has been lawfully adopted abroad by a United States citizen and spouse, or (B) for whom assurances, satisfactory to the Attorney General, have been given by a United States citizen and spouse that if the orphan is admitted into the United States they will adopt him in the United States and will care for him properly and that the preadoption requirements, if any, of the State of the

IMMIGRATION AND NATIONALITY ACT

orphan's proposed residence have been met; and (3) who is ineligible for admission into the United States solely because that portion of the quota to which he would otherwise be chargeable is oversubscribed by applicants registered on the consular waiting list at the time his visa application is made. No natural parent of any eligible orphan who shall be admitted into the United States pursuant to this section shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under the Immigration and Nationality Act.

(7) Any visa which has been or shall be issued to an eligible orphan under this section or under any other immigration law to a child lawfully adopted by a United States citizen and spouse while such citizen is serving abroad in the United States Armed Forces, or is employed abroad by the United States Government, or is temporarily abroad on business, shall be valid until such time, for a period not to exceed 3 years, as the adoptive citizen parent returns to the United States in due course of his service, employment, or business.

(8) Any alien eligible for quota immigrant status under the provisions of section 203 (a) (1) of the Immigration and Nationality Act on the basis of a petition approved by the Attorney General prior to July 1, 1958, shall be held to be a nonquota immigrant and shall be issued a nonquota immigrant visa: *Provided*, That upon his application for an immigrant visa and for admission to the United States the alien is found to have retained his status as established in the approved petition. This section shall be applicable only to aliens admissible to the United States except for the fact that an immigrant visa is not promptly available for issuance to them because the quota of the quota area to which they are chargeable is oversubscribed.

Page 72

EXTREME HARDSHIP AND TUBERCULAR CASES

Section 212 (a). Any alien, who is excludable from the United States under paragraphs (9), (10), or (12) of section 212 (a) of the Immigration and Nationality Act, who (A) is the spouse or child, including a minor unmarried adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or (B) has a son or daughter who is a United States citizen or an alien lawfully admitted for permanent residence, shall, if otherwise admissible, be issued a visa and admitted to the United States for permanent residence (1) if it shall be established to the satisfaction of the Attorney General that (A) the alien's exclusion would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, or son or daughter of such alien, and (B) the admission to the United States of such alien would not be contrary to the national welfare,

SUPPLEMENT

safety, or security of the United States; and (2) if the Attorney General, in his discretion, and pursuant to such terms, conditions, and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa and for admission to the United States.

Notwithstanding the provisions of section 212 (a) (6) of the Immigration and Nationality Act as far as they relate to aliens afflicted with tuberculosis, any alien who (A) is the spouse or child, including the minor unmarried adopted child, of a United States citizen, or of an alien, lawfully admitted for permanent residence, or (B) has a son or daughter who is a United States citizen or an alien lawfully admitted for permanent residence, shall, if otherwise admissible, be issued a visa and admitted to the United States for permanent residence in accordance with such terms, conditions, and controls, if any, including the giving of a bond, as the Attorney General, in his discretion, after consultation with the Surgeon General of the United States Public Health Service, may by regulations prescribe: *Provided*, That the Attorney General shall promptly make a detailed report to the Congress in any case in which the provisions of this section are applied: *Provided further*, That no visa shall be issued under the authority of this section after June 30, 1959.

Page 73

FRAUDULENT MARRIAGE TO PROCURE ENTRY

Section 212 (a) (19). An alien shall be deported as having procured a visa or other documentation by fraud within the meaning of paragraph (19) of section 212 (a), and to be in the United States in violation of this Act within the meaning of subsection (a) (2) of this section, if (1) hereafter he or she obtains any entry into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than two years prior to such entry of the alien and which, within two years subsequent to any entry of the alien into the United States, shall be judicially annulled or terminated, unless such alien shall establish to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws; or (2) it appears to the satisfaction of the Attorney General that he or she has failed or refused to fulfill his or her marital agreement which in the opinion of the Attorney General was hereafter made for the purpose of procuring his or her entry as an immigrant.

IMMIGRATION AND NATIONALITY ACT

Page 78

MAY WAIVE REQUIREMENTS FOR ENTRY OF CERTAIN ALIENS

Section 212 (d) (4). An alien previously lawfully admitted to the United States for permanent residence who, upon return from a temporary absence of less than one year in a country or countries of the Western Hemisphere, was excludable because of failure to have or to present a valid passport, immigrant visa, reentry permit, border crossing card, or other document required at the time of entry, may be granted a waiver of such requirement in the discretion of the district director, or in deportation proceedings in the discretion of the special inquiry officer: *Provided*, That such alien (a) was not otherwise excludable at the time of entry, or (b) having been otherwise excludable at the time of entry is with respect thereto qualified for an exemption from deportability under section 7 of the act of September 11, 1957, and (c) is not otherwise subject to deportation. Denial of a waiver by the district director shall not be appealable but shall be without prejudice to renewal of an application and reconsideration in proceedings before a special inquiry officer. (Approved, April 26, 1958.)

Page 79

ENTRY OF ADOPTED ORPHANS

Section 212 (d) (5). The Attorney General may, pursuant to such terms and conditions as he may by regulations prescribe, adjust the status to that of an alien lawfully admitted for permanent residence, as of the date of his arrival in the United States, in the case of an alien who was paroled into the United States under section 212 (d) (5) of the Immigration and Nationality Act if such alien at the time of his arrival in the United States was an eligible orphan as defined in section 5 of the Refugee Relief Act of 1953, as amended, and was, or thereafter has been, adopted by a United States citizen and spouse in a court of proper jurisdiction.

Page 81

CANCELLATION OF DEPARTURE BONDS

TO CANCEL CERTAIN BONDS POSTED PURSUANT TO THE IMMIGRATION ACT OF 1924, AS AMENDED, OR THE IMMIGRATION AND NATIONALITY ACT.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Attorney General shall, upon application made pursuant to such rules and regulations as he shall promulgate pursuant to this Act, cancel any departure bond posted pursuant to the Immigration Act of 1924, as amended, or the Immigration and Nationality Act, on behalf of any

SUPPLEMENT

refugee who entered the United States as a nonimmigrant after May 6, 1945, and prior to July 1, 1953, and who had his immigration status adjusted to that of an alien admitted for permanent residence pursuant to any public or private law: *Provided, however,* That such application is made not later than five years after date of enactment of this Act.

Sec. 2. For the purposes of this Act the term "refugee" shall mean any alien who (1) establishes that he lawfully entered the United States as a nonimmigrant, (2) that he is or was a person displaced from the country of his birth or nationality or of his last residence as a result of events subsequent to the outbreak of World War II, and (3) that he cannot or could not return to any of such countries because of persecution or fear of persecution on account of race, religion, or political opinions.

Sec. 3. The Attorney General is hereby authorized and directed to refund any sum or sums of moneys received by the Treasury of the United States pursuant to the forfeiture of any bond posted in the case of a refugee as defined in sections 1 and 2 of this Act, whose status has been adjusted, on application by the person, persons, organization, or corporation entitled to the refund, and if a person who would have been entitled to the refund is deceased, application shall be made by, and payment made to, his estate: *Provided, however,* That such application is made not later than five years after the date of enactment of this Act. As used in this section, the term "entitled to the refund" refers to the person or persons, organization or corporation, who or which have paid the moneys upon the forfeiture of the bonds. There are hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, such amounts as may be necessary to effect the refunds authorized by this section.

Approved July 18, 1958.

Page 88

WAIVER OF FINGERPRINTING

Section 221. The Secretary of State and the Attorney General are hereby authorized, in their discretion and on a basis of reciprocity, pursuant to such regulations as they may severally prescribe, to waive the requirement of fingerprinting specified in sections 221 (b) and 262 of the Immigration and Nationality Act, respectively, in the case of any nonimmigrant alien.

Page 97 to follow Section 235a

IMMIGRATION AND NATIONALITY ACT

Page 97

Public Law 85-559
85th Congress, H.R. 11033
July 25, 1958

AN ACT

TO AUTHORIZE THE CREATION OF RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN HUNGARIAN REFUGEES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any alien who was paroled into the United States as a refugee from the Hungarian revolution under section 212 (d) (5) of the Immigration and Nationality Act subsequent to October 23, 1956, who has been in the United States for at least two years, and who has not acquired permanent residence, shall forthwith return or be returned to the custody of the Immigration and Naturalization Service, and shall thereupon be inspected and examined for admission into the United States, and his case dealt with, in accordance with the provisions of sections 235, 236 and 237 of that Act.

Sec. 2. Any such alien who, pursuant to section 1 of this Act, is found, upon inspection by an immigration officer or after hearing before a special inquiry officer, to have been and to be admissible as an immigrant at the time of his arrival in the United States and at the time of his inspection and examination, except for the fact that he was not and is not in possession of the documents required by section 212 (a) (20) of the Immigration and Nationality Act, shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival.

Sec. 3. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.

Approved July 25, 1958.

Page 116

RECOMMENDATION AGAINST DEPORTATION

Section 241 (b). For the purpose of clause (2), notice to the district director having administrative jurisdiction over the place in which the court imposing sentence is located, shall be regarded as notice to the Immigration Service. A recommendation against deportation by the sentencing court made to the district director receiving the notice shall be regarded as made to the Attorney General.

SUPPLEMENT

FRAUDULENT ENTRY

(c) The provisions of section 241 of the Immigration and Nationality Act relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as (1) aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation, or (2) aliens who were not of the nationality specified in their visas, shall not apply to an alien otherwise admissible at the time of entry who (A) is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence; or (B) was admitted to the United States between December 22, 1945, and November 1, 1954, both dates inclusive, and misrepresented his nationality, place of birth, identity, or residence in applying for a visa: *Provided*, That such alien described in clause (B) shall establish to the satisfaction of the Attorney General that the misrepresentation was predicated upon the alien's fear of persecution because of race, religion, or political opinion if repatriated to his former home or residence, and was not committed for the purpose of evading the quota restrictions of the immigration laws or an investigation of the alien at the place of his former home, or residence, or elsewhere. After the effective date of this Act, any alien who is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence and who is excludable because (1) he seeks, has sought to procure, or has procured, a visa or other documentation, or entry into the United States, by fraud or misrepresentation, or (2) he admits the commission of perjury in connection therewith, shall hereafter be granted a visa and admitted to the United States for permanent residence, if otherwise admissible, if the Attorney General in his discretion has consented to the alien's applying or reapplying for a visa and for admission to the United States.

Page 146

ADJUSTMENT OF STATUS

Section 245. (a) The status of an alien who was admitted to the United States as a bona fide nonimmigrant may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, (3) an immigrant visa was immediately available to him at the time of his application, and (4) an immigrant visa is immediately available to him at the time

IMMIGRATION AND NATIONALITY ACT

his application is approved. A quota immigrant visa shall be considered immediately available for the purposes of this subsection only if the portion of the quota to which the alien is chargeable is undersubscribed by applicants registered on a consular waiting list.

(b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the quota of the quota area to which the alien is chargeable under section 202 for the fiscal year current at the time such adjustment is made.

(c) The provisions of this section shall not be applicable to any alien who is a native of any country contiguous to the United States, or of any adjacent island named in section 101 (b) (5).

(d) In the administration of the Immigration and Nationality Act, the Attorney General is authorized, pursuant to such terms and conditions as he may by regulations prescribe, to adjust the status to that of an alien lawfully admitted for permanent residence in the case of (A) an alien, physically present within the United States on July 1, 1957, who is the beneficiary of an approved visa petition for immigrant status under section 203 (a) (1) (A) of the Immigration and Nationality Act filed on his behalf prior to the date of enactment of this act, and (B) his spouse and children physically present within the United States on July 1, 1957. This section shall be applicable only to aliens admissible to the United States except for the fact that an immigrant visa is not promptly available for issuance to them because the quota of the quota area to which they are chargeable is oversubscribed. Upon the payment of the required visa fee and the adjustment of status under this act, the Attorney General shall record the alien's lawful admission for permanent residence as of the date of the order adjusting status. Nothing contained in this section shall be held to repeal, amend, or modify any of the provisions of the act of June 4, 1956 (70 Stat. 241), nor shall any person acquiring exchange visitor status subsequent to the enactment of that act, and who has not received a waiver pursuant thereto, be eligible for adjustment of status under this section. Pursuant to such terms and conditions, and in accordance with such procedure, as he may by regulations prescribe, the Attorney General is authorized to grant nonquota status, and a nonquota immigrant visa shall be issued, to the otherwise admissible spouse and child of any alien specified in clause (A) whose status has been adjusted under this act if the marriage by virtue of which such relationship exists occurred prior to July 1, 1957.

SUPPLEMENT

Page 149 (see page 410 Part 249)

ENTRY PRIOR TO JUNE 28, 1940 RECORDED AS LAWFUL

Section 249 (a). A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of an alien, as of the date of the approval of his application, or, if entry occurred prior to July 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not inadmissible under Section 212 (a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—

- (1) entered the United States prior to June 28, 1940;
- (2) has had his residence in the United States continuously since such entry;
- (3) is a person of good moral character; and
- (4) is not ineligible to citizenship.

Page 182

ABSENCE OF LESS THAN 12 MONTHS

Section 301 (b). In the administration of section 301 (b) of the Immigration and Nationality Act, absence from the United States of less than 12 months in the aggregate, during the period for which continuous physical presence in the United States is required, shall not be considered to break the continuity of such physical presence.

Page 205

ADOPTION OF CHILDREN IN FOREIGN COUNTRIES BY
AMERICAN CITIZENS

Section 323 of the Immigration and Nationality Act is amended by adding at the end thereof the following new subsection:

(c) Any such adopted child (1) one of whose adoptive parents is (A) a citizen of the United States, (B) in the Armed Forces of the United States or in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or of an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, or of a public international organization in which the United States participates by treaty or statute, and (C) regularly stationed abroad in such service or employment, and (2) who is in the United States at the time of

IMMIGRATION AND NATIONALITY ACT

naturalization, and (3) whose citizen adoptive parent declares before the naturalization court in good faith an intention to have such child take up residence within the United States immediately upon the termination of such service or employment abroad of such citizen adoptive parent, may be naturalized upon compliance with all the requirements of the naturalization laws except that no prior residence or specified period of physical presence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required, and paragraph (3) of subsection (a) of this section shall not be applicable.

RULES AND REGULATIONS

Page 264

SUBCHAPTER A—GENERAL PROVISIONS

Part

- 1 General.
- 2 Service records; fees.
- 3 Immigration bonds.
- 4 Lawful admission for permanent residence: special classes; when presumed.
- 5 Revocation of certificates, documents, or records issued or made by administrative officers.
- 6 Board of Immigration Appeals: appeals; reopening and reconsideration.
- 7 Regional commissioners; appeals.
- 8 Reopening and reconsideration.
- 9 Authority of Commissioner, Regional Commissioners, and Assistant Commissioners.
- 10 Formal applications and petitions.

SUBCHAPTER B—IMMIGRATION REGULATIONS

- 204 Petition for immigrant status as a minister or as a person whose services are needed urgently.
- 205 Petition for immigrant status as relative of United States citizen or lawful resident alien.
- 206 Revocation of approval of petitions.
- 211 Documentary requirements: immigrants; waivers.
- 212 Documentary requirements for nonimmigrants: admission of certain inadmissible aliens; parole.
- 212a Admission of certain aliens to perform skilled or unskilled labor.
- 213 Admission of aliens on giving bond or cash deposit.

SUPPLEMENT

Part

- 214 Admission of nonimmigrants: general.
- 214a Admission of nonimmigrants: foreign government official.
- 214b Admission of nonimmigrants: temporary visitor for business or pleasure.
- 214c Admission of nonimmigrants: transit aliens.
- 214d Admission of nonimmigrants: crewmen.
- 214e Admission of nonimmigrants: treaty trader.
- 214f Admission of nonimmigrants: students.
- 214g Admission of nonimmigrants: foreign government representatives to international organizations.
- 214h Admission of nonimmigrants: temporary services, labor, or training.
- 214i Admission of nonimmigrants: representatives of information media.
- 214j Admission of nonimmigrants: exchange aliens.
- 214k Admission of agricultural workers under special legislation.
- 223 Reentry permits.
 - 231 Arrival-departure manifests and lists; supporting documents.
 - 232 Detention of aliens for observation and examination.
 - 233 Temporary removal for examination upon arrival.
 - 235 Inspection of aliens applying for admission.
 - 235a Preexamination of aliens within the United States.
 - 236 Exclusion of aliens.
 - 237 Deportation of excluded aliens.
 - 238 Entry through or from foreign contiguous territory and adjacent islands.
 - 239 Special provisions relating to aircraft: designation of ports of entry for aliens arriving by civil aircraft.
- 241 Judicial recommendations against deportation.
- 242 Proceedings to determine deportability of aliens in the United States: apprehension, custody, hearing, and appeal.
- 243 Deportation of aliens in the United States.
- 244 Suspension of deportation and voluntary departure.
- 245 Adjustment of status of nonimmigrant to that of a person admitted for permanent residence.
- 245a Adjustment of status of nonimmigrant to that of a person admitted for permanent residence in accordance with the Refugee Relief Act of 1953, as amended.

IMMIGRATION AND NATIONALITY ACT

Part

- 246 Rescission of adjustment of status.
- 247 Adjustment of status of certain resident aliens.
- 248 Change of nonimmigrant classification.
- 249 Creation of record of lawful admission for permanent residence.
- 250 Removal of aliens who have fallen into distress.
- 251 Arrival manifests and lists: supporting documents.
- 252 Landing of alien crewmen.
- 253 Parole of alien crewmen.
- 262 Registration of aliens in the United States.
- 263 Registration of aliens in the United States: provisions governing special groups.
- 264 Registration of aliens in the United States: forms and procedure.
- 265 Registration of aliens in the United States: notices of address.
- 274 Aliens; bringing in and harboring.
- 280 Imposition and collection of fines.
- 282 Printing of reentry permits: forms for sale to public.
- 287 Field officers; powers and duties.
- 292 Enrollment and disbarment of attorneys and representatives.
- 299 Immigration forms.

SUBCHAPTER C—NATIONALITY REGULATIONS

- 306 Special classes of persons who may be naturalized: Virgin Islanders.
- 310 Requisition of forms by clerks of court.
- 312 Educational requirements for naturalization.
- 316 Good moral character.
- 316a Residence, physical presence and absence.
- 317 Temporary absence of persons performing religious duties.
- 318 Pending deportation proceedings.
- 319 Special classes of persons who may be naturalized: spouses of United States citizens.
- 322 Special classes of persons who may be naturalized: children of citizen parent.
- 323 Special classes of persons who may be naturalized: children adopted by United States citizens.

SUPPLEMENT

Part

- 324 Special classes of persons who may be naturalized: women who have lost United States citizenship by marriage.
- 325 Special classes of persons who may be naturalized: nationals but not citizens of the United States..
- 327 Special classes of persons who may be naturalized: persons who lost United States citizenship through service in armed forces of foreign country during World War II.
- 328 Special classes of persons who may be naturalized: persons with three years service in armed forces of the United States.
- 329 Special classes of persons who may be naturalized: veterans of the United States armed forces who served during World War I or World War II.
- 330 Special classes of persons who may be naturalized: seamen.
- 332 Preliminary investigation of applicants for naturalization and witnesses.
- 332a Official forms.
- 332b Instruction and training in citizenship responsibilities: textbooks, schools, organizations.
- 332c Photographic studios.
- 332d Designation of employees to administer oaths and take depositions.
- 333 Photographs.
- 334 Petition for naturalization.
- 334a Declaration of intention.
- 335 Preliminary examination on petitions for naturalization.
- 335a Transfer, withdrawal or failure to prosecute petition for naturalization.
- 335b Proof of qualifications for naturalization: witnesses; depositions.
- 335c Investigations of petitioners for naturalization.
- 336 Proceedings before naturalization court.
- 337 Oath of allegiance.
- 338 Certificate of naturalization.
- 339 Functions and duties of clerks of naturalization courts.
- 340 Revocation of naturalization.
- 341 Certificates of citizenship.
- 343 Certificate of naturalization or repatriation; persons who resumed citizenship under section 323 of the Nationality Act of 1940, as amended, or section 4 of the Act of June 29, 1906.

IMMIGRATION AND NATIONALITY ACT

Part

- 343a Naturalization and citizenship papers lost, mutilated, or destroyed; new certificate in changed name; certified copy of repatriation proceedings.
- 343b Special certificate of naturalization for recognition by a foreign state.
- 343c Certifications from records.
- 344 Fees collected by clerks of court.
- 344a Copies of and information from records.
- 402a Special classes of persons who may be naturalized; aliens enlisted in the United States Armed Forces under the Act of June 30, 1950, as amended by Section 402 (e) of the Immigration and Nationality Act.
- 499 Nationality forms.

Page 267

PART 1—GENERAL

SUBCHAPTER A—GENERAL PROVISIONS

Sec.

- 1.1 Definitions.
- 1.2 Prior regulations.

§ 1.1 *Definitions*—(a) *Terms used in this chapter.* (1) The terms defined in section 101 of the Immigration and Nationality Act have the same meanings ascribed to them in that section and as supplemented, explained, and further defined in this chapter.

(2) The term “act” means the “Immigration and Nationality Act.”

(3) The term “attorney” means a person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of a state, territory, insular possession, or District of Columbia and is not under a court order suspending, enjoining, restraining, disbarring, or otherwise restricting, him in practicing law.

(4) Unless the context otherwise requires, the term “case” means any proceeding arising under the immigration laws, Executive orders and Presidential proclamations, except that for the purposes of Part 292 of this chapter, a proceeding under Part 332 of this chapter shall not be regarded as a case.

(5) The term “Central Office” means the headquarters office of the Service at Washington, D. C.

(6) The term “day” when computing the period of time for taking any action provided in this chapter, including the taking of an appeal, shall include Sundays and legal holidays, except that when the last

SUPPLEMENT

day of the period so computed falls on a Sunday or legal holiday, the period shall run until the end of the next day which is neither a Sunday nor a legal holiday.

(7) The term "region" or "immigration region" when used in a geographical sense means that portion of the territory of the United States comprising each of the various major subdivisions of the Service defined and delineated in the statement of organization of the Service.

(8) The term "regional commissioner" means:

(i) The officer duly appointed to the titular position as the Service officer in charge of a region whose appointment has not terminated, or

(ii) The officer or employee of the Service who has been designated to act as regional commissioner in the absence of the regional commissioner.

(9) The term "district" or "immigration district" when used in a geographical sense means that portion of the territory of the United States comprising each of the various major subdivisions of the Service defined and delineated in the statement of organization of the Service.

(10) The term "district director" means:

(i) The officer duly appointed to the titular position as the Service officer in charge of a district whose appointment has not terminated, or

(ii) The officer or employee of the Service who has been designated to act as district director in the absence of the district director.

(11) The term "immigration officer" means:

(i) Any officer or employee of the Service who on December 24, 1952, was serving under an appointment theretofore made to the position of immigrant inspector, patrol inspector, detention officer, investigator, or naturalization examiner, or any other officer of the Service of a higher grade whose appointment has not terminated, or who hereafter is appointed to such position; and

(ii) Any persons designated by the Commissioner to perform the duties and exercise the powers of an immigration officer as set forth in the Immigration and Nationality Act.

(12) The term "officer in charge" means the Service Officer in charge of a suboffice.

(13) The term "practice" means the act of an attorney or representative in appearing in any case, either in person or through the filing of a brief or other document, paper, application or petition on behalf of a client before an officer of the Service or the Board.

IMMIGRATION AND NATIONALITY ACT

(14) The term "representative" means a person representing a religious, charitable, social service or similar organization established in the United States and recognized as such by the Board, or a person described in § 292.1 (b), (d), or (h) and (3) of this chapter.

(15) The term "suboffice" means any office or facility specifically designated as such in the statement of organization of the Service.

(b) *Terms used in Subchapter B of this chapter.* (1) The terms—"arriving at ports of the United States" as used in sections 232, 234, and 235 of the Immigration and Nationality Act; and

"arrival at a port of the United States" as used in section 233 of the Immigration and Nationality Act; and

"arrival in a port of the United States" as used in section 253 of the Immigration and Nationality Act,

mean any coming to any port of the United States from a foreign port or place, from an outlying possession of the United States, or from Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands of the United States, except:

(i) That any person (including a crewman) coming to a port in the United States from a foreign port or place, from an outlying possession of the United States, or from Hawaii, Alaska, Guam, Puerto Rico, and the Virgin Islands of the United States, by vessel or aircraft, whose examination under sections 234 and 235 of the Immigration and Nationality Act is not completed at the first port of call in the United States of such vessel or aircraft shall be considered as coming from a foreign port or place, an outlying possession of the United States, or from Hawaii, Alaska, Guam, Puerto Rico, and the Virgin Islands of the United States at each subsequent port of call in the United States of such vessel or aircraft until such examination is completed;

(ii) That any person (including a crewman) passing through the Canal Zone on board a vessel which does not enter and clear at any port in the Canal Zone for a purpose other than to transit the Zone, to refuel, or to land passengers for medical treatment, shall not be regarded as coming from a foreign port or place solely by reason of such passage through the Canal Zone.

(2) The terms—

"arriving in the United States" as used in section 256 of the Immigration and Nationality Act; and

"bringing an alien to, or providing a means for an alien to come to, the United States" as used in section 271 of the Immigration and Nationality Act; and

"bring to the United States" as used in section 272 of the Immigration and Nationality Act,

SUPPLEMENT

mean any coming from a foreign port or place, from an outlying possession of the United States, or from Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands of the United States to or into the United States or the territorial waters or overlying airspace thereof, except:

- (i) That any person (including a crewman) coming to the United States from a foreign port or place, from an outlying possession of the United States, or from Hawaii, Alaska, Guam, Puerto Rico, and the Virgin Islands of the United States, by vessel or aircraft, whose examination under sections 234 and 235 of the Immigration and Nationality Act is not completed at the first port of call in the United States of such vessel or aircraft shall be considered as coming from a foreign port or place, an outlying possession of the United States, or from Hawaii, Alaska, Guam, Puerto Rico, and the Virgin Islands of the United States at each subsequent port of call in the United States of such vessel or aircraft until such examination is completed;
- (ii) That any person (including a crewman) passing through the Canal Zone on board a vessel which does not enter and clear at any port in the Canal Zone for a purpose other than to transit the Zone, to refuel, or to land passengers for medical treatment, shall not be regarded as coming from a foreign port or place solely by reason of such passage through the Canal Zone.

(3) The terms—

“arrival of any person by water or by air at any port within the United States from any place outside the United States” as used in section 231 of the Immigration and Nationality Act; and

“bring to the United States from any place outside thereof” as used in section 273 (a) of the Immigration and Nationality Act, mean any coming from a foreign port or place or from an outlying possession of the United States to any port of the United States, except:

(i) That any person (including a crewman) coming from a foreign port or place or from an outlying possession of the United States to a port in the United States, by vessel or aircraft, whose examination under sections 234 and 235 of the Immigration and Nationality Act is not completed at the first port of call in the United States of such vessel or aircraft shall be considered as coming from a foreign port or place or from an outlying possession of the United States at each subsequent port of call in the United States of such vessel or aircraft until such examination is completed;

(ii) That any person (including a crewman) passing through the Canal Zone on board a vessel which does not enter and clear at any port in the Canal Zone for a purpose other than to transit the Zone, to refuel, or to land passengers for medical treatment, shall not be

IMMIGRATION AND NATIONALITY ACT

regarded as coming from a foreign port or place solely by reason of such passage through the Canal Zone;

(iii) Solely for the purposes of section 231 of the Immigration and Nationality Act, if it is established to the satisfaction of the district director having administrative jurisdiction over the place of arrival that the coming of any vessel or aircraft to a port of the United States was wholly involuntary, not intended, or not reasonably to be expected, no person on board such vessel or aircraft shall be regarded as arriving from any place outside the United States.

(4) The terms—

“arrival of any vessel or aircraft in the United States from any place outside the United States” as used in section 251 of the Immigration and Nationality Act; and

“arriving in the United States from any place outside thereof” as used in section 254 of the Immigration and Nationality Act; and
“arriving at the United States from any place outside thereof” as used in section 273 (d) of the Immigration and Nationality Act, mean any coming from a foreign port or place or from an outlying possession of the United States to or into the United States or the territorial waters or overlying airspace thereof, except:

(i) That if the examination under sections 234 and 235 of the Immigration and Nationality Act of any person (including a crewman) on board such vessel or aircraft is not completed at the first port of call in the United States of such vessel or aircraft, the vessel or aircraft shall be regarded as coming from a foreign port or place, or an outlying possession of the United States, at each subsequent port of call in the United States of such vessel or aircraft until such examination is completed;

(ii) That a vessel not otherwise within this definition shall not be regarded as falling within the terms thereof solely by reason of passage through the Canal Zone: *Provided*, That if in connection with such passage any vessel enters and clears at any port in the Zone for a purpose other than to transit the Zone, to refuel, or to land passengers for medical treatment, it shall be regarded as arriving in the United States from a place outside thereof;

(iii) Solely for the purposes of section 251 (a) of the Immigration and Nationality Act, with respect to any coming which is established to the satisfaction of the district director having administrative jurisdiction over the place of arrival to have been wholly involuntary, not reasonably to be expected, or not intended;

(5) The term “beneficiary” means an alien in whose behalf a petition is filed under section 204, 205 or 214 (c) of the Immigration and Nationality Act.

SUPPLEMENT

- (6) The term "Board" means the Board of Immigration Appeals.
- (7) The term "continental United States" means the 48 States and the District of Columbia.
- (8) Except as otherwise provided in §§ 214a.1 and 214g.1 of this chapter, the term "immediate family" means a close alien relative by blood or by marriage who is regularly residing in the household of the person in whose family membership is alleged.
- (9) The term "passport":
 - (i) When used with reference to the documentation of immigrant aliens, means a document defined in section 101 (a) (30) of the Immigration and Nationality Act which is unconditionally valid for the bearer's entry into a foreign country at least 60 days beyond the expiration date of his immigrant visa.
 - (ii) When used with reference to the documentation of a non-immigrant alien, means a document defined in section 101 (a) (30) of the Immigration and Nationality Act, which document is valid for a minimum period of 6 months from the date of the expiration of the initial period of the bearer's admission or contemplated initial period of stay authorizing the bearer to return to the country from which he came or to proceed to and enter some other country during such period, except that in the case of a nonimmigrant who is applying for admission as a member of any of the classes described in section 102 of the Immigration and Nationality Act, the period of such validity shall not be required to extend beyond the date of the application of such nonimmigrant for admission to the United States if he is admitted in that status.
- (10) The term "permit to enter" includes an Immigrant Visa, Nonimmigrant Visa, Border Crossing Identification Card and a Re-entry Permit, but does not include a Passport.
- (11) The term "special inquiry officer" means any immigration officer who has been designated and appointed a special inquiry officer in accordance with the provisions of § 9.1 (b) of this chapter and who has a certificate of designation and appointment issued under that section.
- (12) The term "western hemisphere" means North, Central, and South America and the islands immediately adjacent thereto including the places named in section 101 (b) (5) of the Immigration and Nationality Act.
- (13) The term "American Indians born in Canada," as used in section 289 of the Immigration and Nationality Act, means persons who possess at least fifty per centum of blood of the American Indian race. It does not include persons of less than fifty per centum of

IMMIGRATION AND NATIONALITY ACT

blood of the American Indian race who are the spouses or children of such Indians or whose membership in Indian tribes or families is created by adoption.

(14) The term "pay off or discharge," as used in section 256 of the Immigration and Nationality Act, means the signing off the articles of a crewman or the termination in any manner of his service and presence on board the vessel or aircraft on which he arrived in the United States.

(c) *Terms used in section 101 (a) (30) of the Immigration and Nationality Act.* (1) The term "competent authority" means an official duly authorized by the national governments of his own or some other country to issue passports or to authenticate other documents which are cognizable as passports.

(d) *Terms used in Chapter 7 of Title II of the Immigration and Nationality Act and Parts 262 to 266 inclusive of this chapter.*

(1) The term "alien" includes, but is not limited to, any person who, because of doubt as to the applicability of the registration requirement, applies for registration or is registered as a matter of precaution, and any person who is registered upon the application of another person acting in his behalf under the provisions of Chapter 7 of Title II of the Immigration and Nationality Act.

(2) The term "registration" or "register" or "registered" includes fingerprinting in the case of aliens 14 years of age or over.

(3) The term "alien registration receipt card" means any card, certificate or document issued to an alien pursuant to the registration requirements of Chapter 7 of Title II of the Immigration and Nationality Act or Title III of the Alien Registration Act, 1940.

§ 1.2 *Prior regulations.* Regulations under Chapter I of this title, which were in effect on the effective date of the promulgation of these regulations, shall continue to be effective insofar as may be applicable and necessary under the provisions of section 405 of the Immigration and Nationality Act and, as to the control of the departure of persons, under the act of May 22, 1918, as amended and extended by section 1 (a) (30) of Public Law 450, 82d Congress.

1. A new Part 1 is prescribed to read as follows:

PART 1—DEFINITIONS

§ 1.1 *Definitions.* As used in this chapter:

(a) The terms defined in section 101 of the Immigration and Nationality Act (66 Stat. 163) shall have the meanings ascribed to them in that section and as supplemented, explained, and further defined in this chapter.

SUPPLEMENT

- (b) The term "act" means the Immigration and Nationality Act (66 Stat. 163).
- (c) The term "Service" means the Immigration and Naturalization Service.
- (d) The term "Commissioner" means the Commissioner of Immigration and Naturalization.
- (e) The term "Board" means the Board of Immigration Appeals.
- (f) The term "attorney" means any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State, territory, insular possession, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law.
- (g) Unless the context otherwise requires, the term "case" means any proceeding arising under any immigration law, Executive order, or Presidential proclamation, except that for the purposes of Part 292 of this chapter, a proceeding under Part 332 of this chapter shall not be regarded as a case.
- (h) The term "day" when computing the period of time for taking any action provided in this chapter, including the taking of an appeal, shall include Sundays and legal holidays, except that when the last day of the period so computed falls on a Sunday or a legal holiday, the period shall run until the end of the next day which is neither a Sunday nor a legal holiday.
- (i) The term "practice" means the act or acts of an attorney or representative in appearing in any case, either in person or through the filing of a brief or other document, paper, application, or petition on behalf of a client before an officer of the Service or the Board.
- (j) The term "representative" means a person representing a religious, charitable, social-service, or similar organization established in the United States and recognized as such by the Board, or a person described in § 292.1 (b), (d), or (h) of this chapter.

Page 270

PART 1—SUBDIVISION (iv)(8)

- (8) Except as used in §§ 214a.1, 214g.1 and 214m.1 of this chapter, the term "immediate family" means those aliens who are closely related by blood or by marriage to, and regularly reside in the household of, the alien in whose family membership is alleged.

IMMIGRATION AND NATIONALITY ACT

Page 271

PART 2—SERVICE RECORDS: FEES

Sec.

- 2.1 Authority of officers to release information and to certify records.
- 2.2 Certification of nonexistence of record.
- 2.3 Remittance of fees.
- 2.4 Copies of Service records and information; fees.
- 2.5 Fees for service, documents, papers, and records, not specified in the Immigration and Nationality Act.

§ 2.1 *Authority of officers to release information and to certify records.* The Commissioner, the General Counsel of the Service, Regional Commissioners, District Directors, or such other officers of the Service as may be designated by the Commissioner, upon application, may furnish to any person entitled thereto, copies of immigration and naturalization records, or information therefrom, and may certify that any official file, document, or record in the custody or control of the Service is a true file, document, or record, or that a copy of such file, document or record is a true copy.

§ 2.2 *Certification of nonexistence of record.* The chief of the Records Administration and Information Branch of the Central Office may certify the nonexistence in the records of the Service of an official file, document, or record pertaining to a specified person or subject.

§ 2.3 *Remittance of fees*—(a) *When submitted.* Except as otherwise provided in § 2.5, fees shall be submitted with any formal application or petition prescribed in this chapter and shall be in the amount prescribed by the act or other applicable statute or regulation. When any discretionary relief in exclusion or deportation proceedings is granted absent an application and fee therefor, the district director having administrative jurisdiction over the place where the original proceeding was conducted shall require the filing of the application and the payment of the fee. All remittances shall be accepted subject to collection. A receipt issued by a Service officer for any such remittance shall not be binding if the remittance is found uncollectible. Such fees shall not be accepted in the form of postage stamps.

(b) *Payee.* Remittances shall be made payable to the "Immigration and Naturalization Service, Department of Justice," except that in the case of applicants residing in the Virgin Islands of the United States, the remittances shall be made payable to the "Commissioner of Finance of the Virgin Islands," and except that in the case of applicants residing in Guam, the remittances shall be made payable to the "Treasurer, Guam." The address of the payee shall not be included in that part of the form of remittance intended solely for the designation of the payee. Whenever it shall be necessary to indicate on a form of remittance the place at which the remittance is collectible or

SUPPLEMENT

payable, there shall be used the name of the city or town and the State in which is located the Service office to which the application is to be sent.

§ 2.4 Copies of Service records and information: fees. Except as otherwise provided by law or regulations, there shall be paid in advance for furnishing any person or agency (other than an officer or agency of the United States or of any State or any subdivision thereof for official use in connection with the official duties of such officers or agencies) copies, certified or uncertified, of any part of, or information from, the records of the Service, a fee of 25 cents per folio of one hundred words or fraction thereof, with a minimum fee of 50 cents for any such service. Whenever it is desired that a copy of a document or written information from the records be officially certified under seal, an additional fee of \$1.00 is required.

§ 2.5 Fees for service, documents, papers, and records not specified in the Immigration and Nationality Act. In addition to the fees enumerated in sections 281 and 344 of the Immigration and Nationality Act, the following fees and charges are prescribed:

For filing application for United States citizen border crossing identification card	\$ 5.00
For filing application for the benefits of section 316 (b) or 317 of the Immigration and Nationality Act	10.00
For filing an appeal from, or a motion to reopen or reconsider, a decision in an exclusion or deportation proceeding. (The minimum fee of \$25 shall be charged whenever such an appeal or motion is filed by or on behalf of two or more aliens and all of such aliens are covered by one decision.)	25.00
For filing an appeal from, or a motion to reopen or reconsider, any decision under the immigration laws, except from a decision in an exclusion or deportation proceeding. (The minimum fee of \$10 shall be charged whenever such an appeal or motion is filed by or on behalf of two or more aliens and all of such aliens are covered by one decision.)	10.00
For filing application for Alien Registration Receipt Card in lieu of one lost, mutilated, or destroyed, or in changed name, or in lieu of form other than I-151	5.00
For filing application for approval of a school	25.00
For filing application for permission to reapply in the case of excluded or deported aliens, aliens who have fallen into distress and have been removed, aliens who have been removed as alien enemies, or aliens who have been removed at Government expense in lieu of deportation	5.00

IMMIGRATION AND NATIONALITY ACT

For filing application for discretionary relief under section 212 (c) of the Immigration and Nationality Act _____	25.00
For filing application for discretionary relief under section 212 (d) (3) of the Immigration and Nationality Act, except in emergency cases or where the granting of the application is in the interest of the United States Government _____	25.00
For filing application for Alien Laborer's Permit in lieu of one lost, mutilated, or destroyed _____	1.00
For filing application for waiver of passport or visa of an individual alien prior to or at the time he applies for temporary admission to the United States. (This fee shall not be applicable to an admissible alien who is officially engaged in activities in connection with any multipartite treaty organization of which the United States is signatory, or who is a member of the armed forces of any foreign government, or who is seeking admission under section 101 (a) (15) (A) or (G) of the act.) _____ ¹	\$10.00
For filing application for waiver of visa of an individual alien at the time he applies for admission to the United States as a returning resident _____ ¹	\$10.00
For a search of an arrival record in case information is for personal benefit _____	3.00
For annual subscription for "Passenger Travel Reports via Sea and Air" _____	10.00
For an annual table on "Passenger Travel Reports via Sea and Air" _____	.20
For set of six annual tables on "Passenger Travel Reports via Sea and Air" _____	1.00
For filing application for waiver of grounds for exclusion contained in section 212 (a) (14) of the Immigration and Nationality Act _____	10.00
For special statistical tabulations a charge will be made to cover the cost of the work involved.	
For filing application for stay of deportation under § 243.3 (b) of this chapter, except when made concurrently with a motion to reopen or reconsider a decision in a deportation proceeding _____	25.00
For filing application for waiver of passport of an individual alien prior to or at the time he applies for admission to the United States for permanent residence _____	10.00

SUPPLEMENT

For filing application for preexamination. (The fee and application shall not be required of an alien who has filed an application for adjustment of status under section 4 of the Displaced Persons Act of 1948, as amended, or section 6 of the Refugee Relief Act of 1953, as amended; for suspension of deportation; a previous application for preexamination, or an application for adjustment of status under section 245 or 248 or for creation of a record of admission for permanent residence under section 249 of the Immigration and Nationality Act.)	25.00
For filing an application for certificate of citizenship by claimant under section 309 (c) of the act	5.00
<i>Fees for service, documents, papers, and records not specified in the Immigration and Nationality Act. In addition to the fees enumerated in sections 281 and 344 of the Immigration and Nationality Act, the following fees and charges are prescribed:</i>	
* * * * *	
For filing application for adjustment of status pursuant to section 9 or 13 of the act of September 11, 1957. (The fee shall not be required of an alien who has paid the fee for filing an application for preexamination.)	\$25.00

¹ Plus communication costs.

A new Part 2 is prescribed to read as follows:

PART 2—AUTHORITY OF THE COMMISSIONER

§ 2.1 *Authority of the Commissioner.* Without divesting the Attorney General of any of his powers, privileges, or duties under the immigration and naturalization laws, and except as to the Board, there is delegated to the Commissioner the authority of the Attorney General to direct the administration of the Service and to enforce the act and all other laws relating to the immigration and naturalization of aliens. The Commissioner may issue regulations as deemed necessary or appropriate for the exercise of any authority delegated to him by the Attorney General, and may redelegate any such authority to any other officer or employee of the Service.

Page 274

PART 3—IMMIGRATION BONDS

§ 3.1 *Immigration bonds—(a) Acceptable sureties.* In cases other than those in which cash is deposited pursuant to Part 213 of this chapter, the following shall be the only acceptable sureties on a bond

IMMIGRATION AND NATIONALITY ACT

furnished in connection with the administration of the Immigration and Nationality Act:

(1) A company holding a certificate from the Secretary of the Treasury under sections 6 to 13 of title 6 of the United States Code as an acceptable surety on Federal bonds;

(2) A surety who deposits United States bonds or notes which are of the class described in section 15 of title 6 of the United States Code and Treasury Department regulations issued pursuant thereto and which are not redeemable within one year from the date on which they are offered for deposit; or

(3) Sureties, who shall be two in number, each of whom shall justify separately in real property which is not exempted from levy and sale upon execution and which is actually valued, over and above all encumbrances, at double the amount of the bond, and each of whom shall, in addition to making such justification, satisfactorily establish to the immigration officer authorized to approve the bond that his net worth, over and above all obligations and liabilities of any kind, secured or unsecured, is equal to double the amount of the bond.

(b) *Approval; extension agreements; consent of surety; collateral security.* Regardless of the section of law or regulations under which a bond is required, district directors are authorized, either directly or through officers or employees designated by them, to approve bonds which are prepared on a form approved by the Commissioner. Such officers are also authorized to approve formal agreements by which a surety consents to an extension of his liability on any such bond and to approve any power of attorney executed on Form I-312 or Form I-313 which purports to authorize the delivery after its release of collateral deposited to secure the performance of any such bond to some person or concern other than the depositor thereof. Unless otherwise specifically provided in this chapter or by the Commissioner in any case or class of cases, bonds prepared on forms approved by the Commissioner, all agreements of extension of liability relating thereto, and all powers of attorney for delivery of collateral security deposited in connection therewith shall be retained at the office of the Service where approved. Bonds prepared on any form other than one approved by the Commissioner, agreements of extension of liability relating thereto, and any powers of attorney to receive back collateral deposited in connection therewith, shall be submitted to the regional commissioner for approval. Regardless of the form on which the bond is prepared, any power of attorney not executed on Form I-312 or Form I-313, purporting to authorize the delivery after its release of any deposit of collateral security to some person or concern other than the depositor thereof, shall be forwarded, together with the bond

SUPPLEMENT

and all appurtenant documents, to the regional commissioner for approval. In the same manner, all requests for delivery of collateral security to a person other than the depositor or his approved attorney in fact shall be forwarded to the regional commissioner for approval, except that a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor shall be forwarded to the district director for approval.

(c) *Violation of conditions; cancellation.* (1) Whenever it shall appear that a condition of a bond executed in connection with the administration of the immigration laws may have been violated, or when a request for release from liability is received from an obligor, the bond, all appurtenant documents, and a full report of the circumstances shall be forwarded to the district director having administrative jurisdiction over the office where the bond is retained for decision as to whether the conditions of the bond have been met so that it may be cancelled, or whether any condition of the bond has been violated so that liability thereunder should be enforced, or whether the circumstances are such that the bond should be continued in effect. If the obligors are adversely affected by the decision of the district director, they shall be notified by him in writing on Form I-323 of his decision. No appeal shall lie from the decision of the district director.

(2) If all the conditions of a bond executed in connection with the administration of the immigration laws have been complied with and the obligation has thereby been discharged by its own terms, the district director shall so notify the obligors on Form I-391. Similar notice may be given if all the conditions of the bond have been complied with and (i) the alien has departed from the United States or, being the sole obligor on the bond or holding an approved power of attorney from the obligor, is about to depart from the United States, (ii) the alien has died, (iii) the alien has been naturalized as a citizen of the United States, (iv) a new bond has been furnished to replace the existing bond, or (v) in the case of a delivery bond, the warrant of arrest or deportation has been cancelled, or the alien's application for suspension of deportation has been approved, or the alien has been imprisoned, or inducted into the armed forces of the United States.

IMMIGRATION AND NATIONALITY ACT

Page 276

PART 4—LAWFUL ADMISSION FOR PERMANENT RESIDENCE:
SPECIAL CLASSES; WHEN PRESUMED

Sec.

- 4.1 Chinese person; definition.
- 4.2 Presumption of lawful admission.
- 4.3 Applicability of travel restrictions imposed by section 212 (d) (7) of the Immigration and Nationality Act.

§ 4.1 *Chinese person; definition.* For the purposes of this part an alien who is of as much as one-half Chinese blood and is not of as much as one-half blood of a race or races which were ineligible for naturalization under section 303 of the Nationality Act of 1940, as amended, shall be regarded as a Chinese person.

§ 4.2 *Presumption of lawful admission.* An alien of any of the following-described classes shall be presumed to have been lawfully admitted for permanent residence within the meaning of the Immigration and Nationality Act (even though no record of his admission can be found, except as otherwise provided in this part) unless the alien abandoned his status as a lawful permanent resident, or lost such status by operation of law, at any time subsequent to such admission:

(a) *Aliens who entered prior to June 30, 1906.* An alien who establishes that he entered the United States prior to June 30, 1906.

(b) *Aliens who entered across land borders of the United States.* An alien who establishes that, while a citizen of Canada or Newfoundland, he entered the United States across the Canadian border prior to October 1, 1906, and an alien who establishes that while a citizen of Mexico he entered the United States across the Mexican border prior to July 1, 1908.

(b-1) *Aliens who entered at the port of Presidio, Texas, prior to October 21, 1918.* An alien who establishes that, while a citizen of Mexico, he entered the United States at the port of Presidio, Texas, prior to October 21, 1918.

(c) *Aliens preexamined in Canada prior to July 1, 1924.* An alien in whose case no record exists of his actual admission to the United States but who establishes that he gained admission to the United States prior to July 1, 1924 pursuant to preexamination at a United States immigration station in Canada and that a record of such preexamination exists.

(d) *Aliens who entered the Virgin Islands.* An alien who establishes that he entered the Virgin Islands of the United States prior to July 1, 1938, even though a record of his admission as a non-

SUPPLEMENT

immigrant under the Immigration Act of 1924, prior to July 1, 1938, exists.

(e) *Aliens within the Asiatic barred zone.* An alien who establishes that he is of a race indigenous to, and a native of a country within, the Asiatic zone defined in section 3 of the act of February 5, 1917, as amended, that he was a member of a class of aliens exempted from exclusion by the provisions of the said section, and that he entered the United States prior to July 1, 1924, provided that a record of such entry exists.

(f) *Chinese persons.* (1) A Chinese person in whose case there exists a record of his admission to the United States prior to July 1, 1924, under the provisions of the laws, orders, rules or regulations applicable to Chinese and who establishes that at the time of his admission he was a member of one or more of the following-described classes:

Merchants.

Teachers.

Students.

Sons or daughters under 21 years of age and wives, accompanying or following to join such merchants, teachers, and students.

Travelers for curiosity or pleasure.

Accompanying sons or daughters under 21 years of age and accompanying wives of such travelers.

Wives of United States citizens.

Returning laborers.

Persons admitted as United States citizens under section 1993 of the Revised Statutes of the United States, as amended, but who were admitted in error for the reason that their fathers had not resided in the United States prior to their birth.

(2) A Chinese person in whose case there exists a record of his admission to the United States as a member of one of the following classes, and who establishes that he was, at the time of his admission, a member thereof:

Aliens readmitted between July 1, 1924, and December 16, 1943, inclusive, as returning Chinese laborers who acquired lawful permanent residence prior to July 1, 1924.

Persons admitted between July 1, 1924 and June 6, 1927, inclusive, as United States citizens under section 1993 of the Revised Statutes of the United States, but who were admitted in error for the reason that their fathers had no resided in the United States prior to their birth.

Aliens admitted at any time after June 30, 1924, under subsections (b) or (d) of section 4 of the Immigration Act of 1924.

IMMIGRATION AND NATIONALITY ACT

Alien wives admitted between June 13, 1930, and December 16, 1943, inclusive, and after August 9, 1946, under subsection (a) of section 4 of the Immigration Act of 1924.

Aliens admitted on or after December 17, 1943, under subsection (f) of section 4 of the Immigration Act of 1924.

Aliens admitted on or after December 17, 1943, under section 317 (c) of the Nationality Act of 1940, as amended.

Aliens admitted on or after December 17, 1943, as preference or non-preference quota immigrants pursuant to section 2 of the act of that date.

Aliens admitted between July 1, 1924, and December 23, 1952, both dates inclusive, as the wives or minor sons or daughters of treaty merchants, admitted before July 1, 1924.

(g) *Citizens of the Philippine Islands*—(1) *Who entered United States before May 1, 1934*. An alien who establishes that he entered the United States prior to May 1, 1934, and that he was on the date of such entry a citizen of the Philippine Islands: *Provided*, That, for the purpose of petitioning for naturalization under Title III of the Immigration and Nationality Act, such alien shall not be regarded as having been lawfully admitted to the United States for permanent residence unless he was a citizen of the Commonwealth of the Philippines on July 2, 1946.

(2) *Who entered Hawaii between May 1, 1934 and July 3, 1946*. An alien who establishes that he entered Hawaii between May 1, 1934 and July 3, 1946, inclusive, under the provisions of the last sentence of section 8 (a) (1) of the act of March 24, 1934, as amended, that he was on the date of such entry a citizen of the Philippine Islands, and that a record of such entry exists.

(3) *Travel restrictions*. Notwithstanding the provision of this paragraph, an alien of the class described in subparagraph (2) of this paragraph, and an alien of the class described in subparagraph (1) of this paragraph who entered the United States at Hawaii prior to May 1, 1934, shall be subject to the travel restriction imposed by the proviso to section 212 (d) (7) of the Immigration and Nationality Act.

(h) *Aliens temporarily admitted to the United States*. Aliens in any of the following-described classes, who on their admission expressed an intention to remain in the United States temporarily or to pass in transit through the United States, of whose admission a record exists, but who remained in the United States:

(1) Aliens admitted prior to June 3, 1921, except aliens admitted temporarily under the 9th proviso to section 3 of the Immigration Act of 1917, aliens admitted as accredited officials of foreign govern-

SUPPLEMENT

ments, their suites, families, or guests, and seamen admitted in pursuit of their calling.

(2) Aliens admitted under the act of May 19, 1921, as amended, who were admissible for permanent residence under that act notwithstanding the quota limitations thereof.

(3) An accompanying wife or unmarried son or daughter under 21 years of age of an alien admitted under the act of May 19, 1921, as amended, who was admissible for permanent residence under that act notwithstanding the quota limitations thereof.

(4) Aliens admitted under the act of May 19, 1921, as amended, who were charged under that act to the proper quota at time of their admission or subsequently and who remained so charged.

(i) *Citizens of the Trust Territory of the Pacific Islands who entered Guam prior to December 24, 1952.* An alien who establishes that while a citizen of the Trust Territory of the Pacific Islands he entered Guam prior to December 24, 1952, by records, such as Service records subsequent to June 15, 1952, records of the Guamanian Immigration Service, records of the Navy or Air Force, or records of contractors of those agencies, and was residing in Guam on that date.

(j) *Aliens admitted to Guam.* (1) An alien who establishes that he was admitted to Guam prior to December 24, 1952, by records, such as Service records subsequent to June 15, 1952, records of the Guamanian Immigration Service, records of the Navy or Air Force, or records of contractors of those agencies; that he was not excludable under the act of February 5, 1917, as amended; and that he continued to reside in Guam until December 24, 1952, and thereafter has not been admitted or readmitted into Guam as a nonimmigrant: *Provided*, That the provisions of this subparagraph shall not apply to an alien who was exempted from the contract laborer provisions of section 3 of the Immigration Act of February 5, 1917, as amended, through the exercise, expressly or impliedly, of the 4th or 9th provisos to section 3 of the said act.

(2) An alien residing in Guam who establishes that he was previously lawfully admitted for permanent residence at a continental port of the United States, that a record of such admission exists, and that he has not abandoned the status of resident of the United States.

§ 4.3 Applicability of travel restrictions imposed by section 212 (d) (7) of the Immigration and Nationality Act. Nothing in this part shall be construed as exempting any person or class of persons enumerated herein from the application of section 212 (d) (7) of the Immigration and Nationality Act.

IMMIGRATION AND NATIONALITY ACT

Page 279

PART 5—REVOCATION OF CERTIFICATES, DOCUMENTS, OR RECORDS
ISSUED OR MADE BY ADMINISTRATIVE OFFICERS

Sec.

- 5.1 Certificates, documents, and records subject to cancellation.
- 5.11 Report and notice.
- 5.12 Failure to answer; admission of allegations.
- 5.13 Answer filed; personal appearance; notice.
- 5.14 Surrender of documents.

§ 5.1 Certificates, documents, and records subject to cancellation. The cancellation of certificates, documents, or records referred to in section 342 of the Immigration and Nationality Act shall apply to a certificate of naturalization, certificate of repatriation, certificate of citizenship, certificate of derivative citizenship, certificate of lawful entry or certificate of registry issued prior to December 24, 1952, special certificate of naturalization for recognition by a foreign state, copies of such certificates, documents, or records, exception from the classification of alien enemy, and certifications of the records of the Service made or issued under section 341 (e) or 342 (b) (8) of the Nationality Act of 1940, or section 343 (e) or 344 (b) (6) of the Immigration and Nationality Act.

§ 5.11 Report and notice. Except as otherwise provided in this chapter, whenever it shall appear that any certificate, document, or record referred to in § 5.1 was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, the issuing officer, a complete report shall be submitted to the district director having administrative jurisdiction over the subject's last known place of residence in the United States. If the district director is satisfied that a *prima facie* showing has been made that such certificate, document, or record was obtained or granted through illegality or fraud, he shall cause to be served a written notice on the person to whom the certificate or document was issued or in whose behalf the record was furnished at such person's last known address. The notice shall inform such person of intention to cancel the certificate, document, or record, and the grounds upon which it is intended to base such cancellation. The notice shall also inform the person to whom it is addressed that he may submit, within 60 days from the date of service of the notice, an answer in writing under oath, setting forth reasons why such certificate, document, or record should not be cancelled. The notice shall also advise the person to whom it is addressed that he may, within such period and upon his request have an opportunity to appear in person, in support or in lieu of his written answer, before such immigration officer as may be designated for that purpose. The person to whom the notice is addressed shall further

SUPPLEMENT

be advised therein that he may have the assistance of counsel, without expense to the government of the United States, in the preparation of his answer or in connection with such personal appearance, and shall have opportunity to examine, at the appropriate office of the Service, the evidence upon which it is proposed to base such cancellation.

§ 5.12 *Failure to answer; admission of allegations.* If the person served with notice under § 5.11 fails to file a written answer within the time allowed therefor, or if the answer admits the allegations in the notice irrespective of whether a personal appearance is requested, the district director shall cancel the certificate, document, or record. No appeal shall lie from such cancellation.

§ 5.13 *Answer filed; personal appearance; notice.* Upon receipt of an answer asserting a defense to the allegations in a notice served pursuant to § 5.11, the district director shall designate an officer of the Service to consider and, if a request for a personal appearance was made, to interview the party affected. If a personal appearance was requested, such officer shall notify the subject of the time, date and place, to appear for interview and of the subject's right to be represented by counsel or representative at no expense to the Government. At the conclusion of the interview, the subject or his attorney or representative shall be given a reasonable time not to exceed 10 days for the submission of briefs. The officer shall, after consideration of the case if no personal appearance was requested, or after completion of the interview and the consideration of any brief submitted, prepare a report summarizing the evidence and containing his findings and recommendation. The report shall be forwarded to the district director, with the record in the case. If the district director finds that the certificate, document, or record was not obtained through illegality or fraud, he shall order the matter terminated, and the subject shall be so notified. If the district director finds that the certificate, document, or record was obtained or created through illegality or fraud, he shall order that it be cancelled ab initio. Notice of such action and the reasons therefor shall be given to the subject or his attorney or representative, and the subject shall be informed of his right to appeal within 10 days from the receipt of such notification in accordance with Part 7 of this chapter.

§ 5.14 *Surrender of documents.* Upon the cancellation of any document under this part, the subject shall be requested by the district director, in writing, to surrender the document to the district director.

IMMIGRATION AND NATIONALITY ACT

A new Part 3 is prescribed to read as follows:

Page 281

PART 3—BOARD OF IMMIGRATION APPEALS

Sec.

- 3.1 Board of Immigration Appeals; organization, jurisdiction, and powers.
- 3.2 Reopening or reconsideration.
- 3.3 Notice of appeal.
- 3.4 Withdrawal of appeal.
- 3.5 Forwarding of record on appeal.
- 3.6 Stay of execution of decision.
- 3.7 Notice of certification.
- 3.8 Motion to reopen or motion to reconsider.

§ 3.1 *Board of Immigration Appeals*—(a) *Organization*. There shall be in the Department of Justice a Board of Immigration Appeals, which shall be under the supervision and direction of the Attorney General and shall be responsible solely to him. The Board shall consist of a chairman and four other members and shall have attached to it an executive assistant-chief examiner who shall have authority to act as an alternate member. It shall also have attached to it such number of attorneys and other employees as the Attorney General, upon recommendation of the Board, shall from time to time direct. In the absence of the Chairman, a member designated by him shall act as chairman.

(b) *Appellate jurisdiction*. Appeals shall lie to the Board of Immigration Appeals from the following:

- (1) Decisions of special inquiry officers in exclusion cases, as provided in Part 236 of this chapter.
- (2) Decisions of special inquiry officers in deportation cases, as provided in Part 242 of this chapter.
- (3) Decisions on applications for the exercise of the discretionary authority contained in section 212 (c) of the act, as provided in Part 212 of this chapter.
- (4) Decisions involving administrative fines and penalties, including mitigation thereof, as provided in Part 280 of this chapter.
- (5) Decisions on petitions filed in accordance with section 205 of the act or decisions revoking the approval of such petitions in accordance with section 206 of the act, as provided in Parts 205 and 206, respectively, of this chapter.
- (6) Decisions on applications for the exercise of the discretionary authority contained in section 212 (d) (3) of the act as provided in Part 212 of this chapter.
- (7) Determinations relating to bond, parole, or detention of an alien as provided in Part 242 of this chapter.

SUPPLEMENT

(c) *Jurisdiction by certification.* The Commissioner, or any other duly authorized officer of the Service, or the Board may in any case arising under paragraph (b) of this section require certification of such case to the Board.

(d) *Powers of the Board—(1) Generally.* Subject to any specific limitation prescribed by this chapter, in considering and determining cases before it as provided in this part the Board shall exercise such discretion and authority conferred upon the Attorney General by law as is appropriate and necessary for the disposition of the case, except that the Board shall have no authority to consider or determine the manner in which, or at whose expense, or to which country, an alien shall be deported.

(2) *Finality of decision.* The decision of the Board shall be final except in those cases reviewed by the Attorney General in accordance with paragraph (h) of this section. The Board may return a case to the Service for such further action as may be appropriate, without entering a final decision on the merits of the case.

(3) *Rules of practice; discipline of attorneys and representatives.* The Board shall have authority, with the approval of the Attorney General, to prescribe rules governing proceedings before it. It shall also determine whether any organization desiring representation is of a kind described in § 1.1 (j) of this chapter, and shall regulate the conduct of, and may disbar for cause, attorneys, representatives of organizations, and others who appear in a representative capacity before the Board or the Service.

(e) *Oral argument.* Oral argument shall be heard by the Board, upon request, in any case over which the Board acquires jurisdiction by appeal or certification as provided in this part. If an appeal has been taken, request for oral argument, if desired, shall be included in the Notice of Appeal. The Board shall have authority to fix any date or change any date upon which oral argument is to be heard. The Service may be represented in argument before the Board by an officer of the Service designated by the Commissioner. The Board shall convene for the purpose of hearing oral argument at its office in Washington, D. C., at 2:00 p. m., or such other time as it may designate on every day except Saturdays, Sundays, and legal holidays.

(f) *Service of Board decisions.* The decision of the Board shall be in writing and copies thereof shall be transmitted by the Board to the Service and a copy shall be served upon the alien or party affected as provided in Part 292 of this chapter.

(g) *Decisions of the Board as precedents.* Except as they may be modified or overruled by the Board or the Attorney General, decisions of the Board shall be binding on all officers and employees of the

IMMIGRATION AND NATIONALITY ACT

Service in the administration of the act, and selected decisions designated by the Board shall serve as precedents in all proceedings involving the same issue or issues.

(h) *Referral of cases to the Attorney General.* (1) The Board shall refer to the Attorney General for review of its decision all cases which:

- (i) The Attorney General directs the Board to refer to him.
- (ii) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.
- (iii) The Commissioner requests be referred to the Attorney General for review.

(2) In any case in which the Attorney General reviews the decision of the Board, the decision of the Attorney General shall be stated in writing and shall be transmitted to the Board for transmittal and service as provided in paragraph (f) of this section.

§ 3.2 *Reopening or reconsideration.* The Board may on its own motion reopen or reconsider any case in which it has rendered a decision. Reconsideration or reopening of any case in which a decision has been made by the Board, whether requested by the Commissioner or any other duly authorized officer of the Service, or by the party affected by the decision, shall be only upon written motion to the Board. A motion to reopen or a motion to reconsider shall not be made by or in behalf of a person who is the subject of deportation proceedings subsequent to his departure from the United States. Any departure from the United States of a person who is the subject of deportation proceedings occurring after the making of a motion to reopen or a motion to reconsider shall constitute a withdrawal of such motion. For the purpose of this section, any final decision made by the Commissioner prior to the effective date of the act with respect to any case within the classes of cases enumerated in § 3.1 (b) (1), (2), (3), (4), or (5) shall be regarded as a decision of the Board.

§ 3.3 *Notice of appeal.* (a) A party affected by a decision who is entitled under this chapter to appeal to the Board shall be given notice of his right to appeal. An appeal shall be taken by filing Notice of Appeal, Form I-290A, in triplicate, with the officer of the Service having administrative jurisdiction over the case, within the time specified in the governing sections of this chapter. The Commissioner, or any other duly authorized officer of the Service, or the Board, in his or its discretion, for good cause shown, may extend the time within which to submit a brief in support of such appeal. The certification of a case as provided in this part shall not relieve the party affected from compliance with the provisions of this section

SUPPLEMENT

in the event that he is entitled, and desires, to appeal from an initial decision, nor shall it serve to extend the time specified in the applicable parts of this chapter for the taking of an appeal. Departure from the United States of a person under deportation proceedings prior to the taking of an appeal from a decision in his case shall constitute a waiver of his right to appeal.

(b) *Fees.* Except as otherwise provided in this section, a notice of appeal or a motion filed under this part by any person other than an officer of the Service shall be accompanied by the appropriate fee specified by, and remitted in accordance with, the provisions of § 103.7 of this chapter. In any case in which an alien or other party affected is unable to pay the fee fixed for an appeal or a motion, he shall file with the notice of appeal or the motion his affidavit stating the nature of the motion or appeal, his belief that he is entitled to redress, and his inability to pay the required fee, and shall request permission to prosecute the appeal or motion without prepayment of such fee. When such an affidavit is filed with the officer of the Service from whose decision the appeal is taken or with respect to whose decision the motion is addressed, such officer shall, if he believes that the appeal or motion is not taken or made in good faith, certify in writing his reasons for such belief for consideration by the Board. The Board may, in its discretion, authorize the prosecution of any appeal or motion without prepayment of fee.

§ 3.4 *Withdrawal of appeal.* In any case in which an appeal has been taken, the party taking the appeal may file a written withdrawal thereof with the officer with whom the notice of appeal was filed. If the record in the case has not been forwarded to the Board on appeal in accordance with § 3.5 the decision made in the case shall be final to the same extent as though no appeal had been taken. If the record has been forwarded on appeal, the withdrawal of the appeal shall be forwarded to the Board and, if no decision in the case has been made on the appeal, the record shall be returned, and the initial decision shall be final to the same extent as though no appeal had been taken. If a decision on the appeal shall have been made by the Board in the case, further action shall be taken in accordance therewith. Departure from the United States of a person who is the subject of deportation proceedings subsequent to the taking of an appeal but prior to a decision thereon shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

§ 3.5 *Forwarding of record on appeal.* If an appeal is taken from a decision, as provided in this chapter, the entire record of the proceeding shall be forwarded to the Board by the officer of the

IMMIGRATION AND NATIONALITY ACT

Service having administrative jurisdiction over the case upon timely receipt of the brief in support of the appeal, or upon expiration of the time allowed for the submission of the brief.

§ 3.6 *Stay of execution of decision.* The decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the Board by way of certification.

§ 3.7 *Notice of certification.* Whenever in accordance with the provisions of § 3.1 (c) a case is required to be certified to the Board, the alien or other party affected shall be given notice of certification. A case shall be certified only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is made that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is made that the case will be certified, the officer of the Service having administrative jurisdiction over the case shall cause a Notice of Certification (Form I-290C) to be served upon the party affected. In either case the notice shall inform the party affected that the case is required to be certified to the Board and that he has the right to make representation before the Board, including the making of oral argument and the submission of a brief. If the party affected desires to submit a brief, it shall be submitted to the officer of the Service having administrative jurisdiction over the case for transmittal to the Board within ten days from the date of receipt of the notice of certification, unless for good cause shown such officer or the Board extends the time within which the brief may be submitted. The case shall be certified and forwarded to the Board by the officer of the Service having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief.

§ 3.8 *Motion to reopen or motion to reconsider*—(a) *Form.* Motions to reopen and motions to reconsider shall be submitted in triplicate. A request for oral argument, if desired, shall be incorporated in the motion. The Board in its discretion may grant or deny oral argument. Motions to reopen shall state the new facts to be proved at the reopened hearing and shall be supported by affidavits or other evidentiary material. Motions to reconsider shall state the reasons upon which the motion is based and shall be supported by such precedent decisions as are pertinent. In any case in which a depor-

SUPPLEMENT

tation order is in effect, there shall be included in the motion to reopen or reconsider such order a statement by or on behalf of the moving party declaring whether the subject of the deportation order is also the subject of any pending criminal proceeding under section 242 (e) of the act, and, if so, the current status of that proceeding. If the motion to reopen or reconsider is for the purpose of seeking discretionary relief, there shall be included in the motion a statement by or on behalf of the moving party declaring whether the alien for whose relief the motion is filed is subject to any pending criminal prosecution and, if so, the nature and current status of that prosecution. The filing of a motion to reopen or a motion to reconsider shall not serve to stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Board or the officer of the Service having administrative jurisdiction over the case.

(b) *Distribution of motion papers when alien is moving party.* In any case in which a motion to reopen or a motion to reconsider is made by the alien or other party affected, the three copies of the motion papers shall be submitted to the officer of the Service having administrative jurisdiction over the place where the proceedings were conducted. Such officer shall retain one copy, forward one copy to the officer of the Service who made the initial decision in the case, and submit the third copy with the case to the Board.

(c) *Distribution of motion papers when the Commissioner, or any other duly authorized officer of the Service is the moving party.* Whenever a motion to reopen or a motion to reconsider is made by the Commissioner or any other duly authorized officer of the Service, he shall cause one copy of the motion to be served upon the alien or party affected, as provided in Part 292 of this chapter, and shall cause the record in the case and one copy of the motion to be filed directly with the Board, together with proof of service upon the alien or other party affected. Such alien or party shall have a period of ten days from the date of service upon him of the motion within which he may, if he so desires, submit a brief in opposition to the motion. If such a brief is submitted, two copies thereof shall be filed directly with the Board and one copy directly with the Commissioner. The Board, in its discretion, for good cause shown may extend the time within which such brief may be submitted.

(d) *Ruling on motion.* Rulings upon motions to reopen or motions to reconsider shall be by written order. If the order directs a re-opening, the record shall be returned to the officer of the Service having administrative jurisdiction over the place where the reopened proceedings are to be conducted. If the motion to reconsider is

IMMIGRATION AND NATIONALITY ACT

granted, the decision upon such reconsideration shall affirm, modify, or reverse the original decision made in the case.

Page 286

PART 7—REGIONAL COMMISSIONERS: APPEALS

Sec.

- 7.1 Regional commissioners.
- 7.11 Notice of appeal.
- 7.12 Withdrawal of appeal.
- 7.13 Forwarding of record on appeal.
- 7.14 Stay of execution of decision.
- 7.15 Notice of certification.
- 7.16 Fees.

§ 7.1 *Regional commissioners*—(a) *Appellate jurisdiction*. Appeals shall lie to the regional commissioners from the following:

(1) Decisions of district directors on petitions filed in accordance with section 204 or 214 (c) of the Immigration and Nationality Act or section 4 (b) (2) (B) of the act of September 11, 1957, or from decisions revoking the approval of such petitions in accordance with section 206 of the Immigration and Nationality Act, as provided in Parts 204, 205, 214h, and 206 of this chapter;

(2) Decisions of district directors on applications for consent to reapply for admission to the United States under section 212 (a) of the Immigration and Nationality Act and on applications for waiver of excludable grounds under section 5 or 7 of the act of September 11, 1957, filed by a visa applicant outside the United States, as provided in Part 212 of this chapter;

(3) Decisions of district directors on applications for permission for aliens to enter the United States notwithstanding section 212 (a) (14) of the Immigration and Nationality Act, as provided in Part 212a of this chapter;

(4) Decisions of district directors on applications for the approval of schools or from decisions of district directors revoking the approval of schools, in accordance with section 101 (a) (15) (F) of the Immigration and Nationality Act, as provided in Part 214f of this chapter;

(5) Decisions of district directors on applications for reentry permits under section 223 of the Immigration and Nationality Act, as provided in Part 223 of this chapter;

(6) Decisions of district directors on applications for adjustment of status under section 245 of the Immigration and Nationality Act, as provided in Part 245 of this chapter;

(7) Decisions of district directors rescinding adjustment of status under section 246 of the Immigration and Nationality Act, as provided in Part 246 of this chapter;

SUPPLEMENT

- (8) Decisions of district directors adjusting status under section 247 of the Immigration and Nationality Act, as provided in Part 247 of this chapter;
- (9) Decisions of district directors on applications to change status under section 248 of the Immigration and Nationality Act, as provided in Part 248 of this chapter;
- (10) Decisions of district directors on applications for the creation of a record of admission under section 249 of the Immigration and Nationality Act, as provided in Part 249 of this chapter;
- (11) Decisions of district directors on applications filed under Parts 316 and 317 of this chapter for residence or physical presence benefits for naturalization purposes;
- (13) Decisions of district directors on applications for certificates of citizenship under Part 341 of this chapter;
- (14) Decisions of district directors revoking certificates, documents or records under section 342 of the Immigration and Nationality Act, as provided in Part 5 of this chapter;
- (15) Decisions of district directors on applications for certificates of naturalization or repatriation under Part 343 of this chapter;
- (16) Decisions of district directors on applications for replacement of certificates of naturalization or citizenship under Part 343a of this chapter;
- (17) Decisions of district directors on applications for special certificates of naturalization under section 343 of the Immigration and Nationality Act, as provided in Part 343b of this chapter;
- (19) Decisions of district directors on applications for preexamination under Part 235a of this chapter.

(b) *Jurisdiction by certification.* The regional commissioner may direct that any case or class of cases be certified to him. If the case is one of a class enumerated in § 6.1 (b) of this chapter, the regional commissioner may certify the case to the Board in accordance with § 6.1 (c) of this chapter. In any other case, he may enter such decision as he deems appropriate, and further action shall be taken in accordance with such decision.

(c) *Powers of the regional commissioner.* In considering and determining cases appealed or certified to him and in which he has jurisdiction to enter a decision, the regional commissioner shall exercise such discretion and authority conferred upon the Attorney General by the Immigration and Nationality Act as is appropriate and necessary for the disposition of the case.

(d) *Decision of regional commissioner.* The decision of the regional commissioner shall be in writing. The alien or other party affected by the decision shall be informed of the decision made in the case.

IMMIGRATION AND NATIONALITY ACT

§ 7.11 *Notice of appeal.* Whenever an alien or other party affected by a written decision is entitled under this chapter to appeal to the regional commissioner, he shall be given written notice that he may appeal from such decision; that such appeal may be taken by filing with the district director having administrative jurisdiction over the case three copies of Notice of Appeal, Form I-290B; and, except as otherwise provided in this chapter, that such appeal must be taken within ten days from the receipt of notification of decision. The Form I-290B shall be enclosed with the written notice to the alien. The party taking the appeal may file with the Notice of Appeal a brief in support of his appeal. The party affected may waive the submission of such brief. The district director or the regional commissioner, in his discretion, for good cause shown, may extend the time within which the brief may be submitted. One copy of the Notice of Appeal shall be retained in the office where the proceedings are pending and two copies shall be placed in the file relating to the case. The certification of a case as provided in this part shall not relieve the party affected from compliance with the provisions of this section in the event such party is entitled, and desires, to appeal from an initial decision, nor shall it serve to extend the time specified in the applicable parts of this chapter for the taking of an appeal.

§ 7.12 *Withdrawal of appeal.* In any case in which an appeal has been taken, the party taking the appeal may file a written withdrawal of such appeal with the officer with whom the Notice of Appeal was filed. If the record in the case has not been forwarded to the regional commissioner on appeal in accordance with § 7.13, the decision made in the case shall be final to the same extent as though no appeal had been taken. If the record in the case has been forwarded on appeal, the withdrawal of the appeal shall be forwarded to the regional commissioner and if no decision in the case has been made on the appeal, the record shall be returned to the office in which the proceedings are pending and the decision in the case shall be final to the same extent as though no appeal had been taken. If a decision on the appeal was made in the case, further action shall be taken in accordance therewith.

§ 7.13 *Forwarding of record on appeal.* If an appeal is taken from a decision, either written or oral, as provided in this chapter, the entire record of the proceedings shall be forwarded by the district director having administrative jurisdiction over the case to the regional commissioner:

(a) Upon receipt of the Notice of Appeal and brief in support thereof if the decision appealed from was in writing; or

SUPPLEMENT

(b) Upon receipt of the brief in support of an appeal taken orally if the decision appealed from was oral; or

(c) Upon expiration of the time allowed for the submission of the brief; or

(d) Upon receipt of a written waiver of the right to submit a brief.

§ 7.14 *Stay of execution of decision.* The decision of any proceeding under this chapter from which an appeal to the regional commissioner may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the regional commissioner by way of certification.

§ 7.15 *Notice of certification.* When the regional commissioner in accordance with the provisions of § 7.1 (b) directs that a case (other than one falling within the classes enumerated in § 6.1 (b) of this chapter) be certified to him for review, the alien or other party affected shall be given notice of such certification. Except as otherwise provided in this chapter, a case shall not be certified until an initial decision has been made and no appeal has been taken. If it is known at the time of making the initial decision that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision was made that the case will be certified, the district director having administrative jurisdiction over the case shall cause a notice of certification (Form I-290C) to be served upon the party affected. In either case the notice shall inform the party affected that the case is required to be certified to the regional commissioner and of the right to submit a brief, if desired, for consideration by the regional commissioner. The brief shall be submitted to such district director for transmittal to the regional commissioner within ten days from receipt of the notice of certification, unless, for good cause shown, the district director or the regional commissioner extends the time within which the brief may be submitted. The party affected may waive the submission of such brief. The record of the case shall be certified and forwarded to the regional commissioner by the district director upon receipt of the brief, or the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief.

§ 7.16 *Fees.* Except as otherwise provided in this section, a notice of appeal filed under this part shall be accompanied by a fee of \$10 as prescribed by, and remitted in accordance with, the provisions of Part 2 of this chapter. In any case in which an alien or other party

IMMIGRATION AND NATIONALITY ACT

affected is unable to pay the fee for an appeal, he shall file with the notice of appeal his affidavit stating the nature of the appeal, the affiant's belief that he is entitled to redress, his inability to pay the required fee, and requesting permission to prosecute the appeal without prepayment of such fee. If such an affidavit is filed, the officer of the Service from whose decision the appeal is taken shall, if he believes that the appeal is not taken in good faith, certify in writing his reasons for such belief for consideration by the regional commissioner. The regional commissioner may, in his discretion, authorize the prosecution of any such appeal without prepayment of fee.

Page 290

PART 8—REOPENING AND RECONSIDERATION

Sec.

- 8.1 Reopening and reconsideration.
- 8.2 Reopening of suspension cases pending in Congress.
- 8.11 Motion to reopen or reconsider.

§ 8.1 *Reopening and reconsideration.* Except as provided in § 6.2 of this chapter, a hearing or examination in any proceeding provided for in this chapter may be reopened or the decision made therein reconsidered for proper cause at the instance of, or upon motion made by the party affected and granted by the regional commissioner, if the decision in the case was made by him, or if the case is before him for review; or the district director, if the decision in the case was made by such officer, unless the record in the case previously was forwarded to the Board or to the regional commissioner; or the special inquiry officer, if he has ordered suspension of deportation and the regional commissioner has approved the granting of suspension but final action in the case has not been taken by Congress; or the special inquiry officer, in any other case in which the decision was made by him, unless the record in the case previously was forwarded to the Board or to the regional commissioner. A motion to reopen or a motion to reconsider shall not be made by or in behalf of a person who is the subject of deportation proceedings subsequent to his departure from the United States. Any departure of such person from the United States occurring after the making by him of a motion to reopen or a motion to reconsider shall constitute a withdrawal of such motion.

§ 8.2 *Reopening of suspension cases pending in Congress.* Any deportation proceeding in which a special inquiry officer has ordered suspension of deportation, and the regional commissioner has approved the granting of suspension, but final action in the case has not been taken by Congress, may be reopened by the special inquiry

SUPPLEMENT

officer for proper cause upon motion made by an examining officer or the alien.

A motion to reopen which is granted by the special inquiry officer in a suspension case pending before Congress shall be conditioned upon withdrawal of the case from the list of suspension cases referred to Congress.

§ 8.11 *Motion to reopen or reconsider*—(a) *Filing*. When the alien is the moving party, a motion to reopen or to reconsider shall be filed in duplicate with the district director of the place where the proceeding was conducted for transmittal to the officer having jurisdiction to act on the motion, as provided in § 8.1. In any case in which an examining officer has appeared before a special inquiry officer, the district director shall immediately forward a copy of the alien's motion to such examining officer. When an officer of the Service is the moving party, a copy of the motion shall be served on the alien or other party in interest, as provided in Part 292 of this chapter, and the motion, together with proof of service, shall be filed directly with the officer having jurisdiction to act on the motion. The party opposing the motion shall have ten days from the date of service thereof within which he may submit a brief. In his discretion, for good cause shown, the officer having jurisdiction to act on the motion may extend the time within which such brief may be submitted. If the officer who originally decided the case is unavailable, the motion may be referred to another officer in the district or region having jurisdiction over the subject matter and authorized to act in such cases. Motions to reopen shall state the new facts to be proved at the reopened hearing and shall be supported by affidavits or other evidentiary material. Motions to reconsider shall state the reasons for reconsideration and shall be supported by such precedent decisions as are pertinent. A motion not complying fully with this section shall not be accepted and shall be returned to the moving party with a brief statement of the reason for its return. The filing of a motion to reopen or a motion to reconsider under this part shall not serve to stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay is specifically granted by the district director of the place where the proceeding was conducted.

(b) *Ruling on motion*. Rulings upon motions to reopen or motions to reconsider shall be by written decision. If the decision directs a reopening, the record shall be returned to the district director having administrative jurisdiction over the place where the reopened proceedings are to be conducted. If the motion to reconsider is granted, the original decision shall be reconsidered at the time of, and by the

IMMIGRATION AND NATIONALITY ACT

officer, granting such motion. The decision upon such reconsideration shall affirm, modify, or reverse the original decision made in the case.

(c) *Notice of reopened hearing or examination.* In any case in which a hearing or examination is reopened as provided in Part 6 of this chapter or this part, a notice of hearing or examination shall be served on the party affected in the same manner and form as the notice required for the original hearing or examination.

(d) *Reopened hearing or examination.* The reopened hearing or examination shall be conducted and further action taken in the proceedings as provided in this chapter for the conduct of the original hearing or examination.

(e) *Appeal.* The decision upon a motion to reopen or a motion to reconsider shall be final, subject to the limitations imposed by § 6.1 (b) (2) of this chapter.

(f) *Fees.* Except as otherwise provided in this paragraph, a motion filed under this part by any person other than an officer of the Service shall be accompanied by a fee specified by, and remitted in accordance with, the provisions of Part 2 of this chapter. In any case in which an alien or other party affected is unable to pay the fee for a motion, he shall file with the motion his affidavit stating the nature of the motion, the affiant's belief that he is entitled to redress, his inability to pay the required fee, and request permission to prosecute the motion without prepayment of such fee. If such an affidavit is filed, the district director having administrative jurisdiction over the place where the proceedings were conducted shall, if he believes that the motion is not made in good faith, certify in writing his reasons for such belief for consideration by the officer having jurisdiction to act on the motion as provided in § 8.1. The officer having jurisdiction to act on the motion may, in his discretion, authorize the prosecution of any such motion without prepayment of fee.

Page 291

PART 9—AUTHORITY OF COMMISSIONER, REGIONAL COMMISSIONERS, AND ASSISTANT COMMISSIONERS

Sec.

- 9.1 Authority of Commissioner.
- 9.2 Authority of Assistant Commissioner, Examinations Division.
- 9.3 Authority of Assistant Commissioner, Investigations Division.
- 9.4 Authority of Assistant Commissioner, Enforcement Division.
- 9.5 Authority of Assistant Commissioner, Administrative Division.
- 9.5a Authority of Regional Commissioners.
- 9.5b Authority of District Directors.
- 9.6 Reservation of authority.

§ 9.1 *Authority of Commissioner*—(a) *General.* Under the general direction of the Attorney General, the Commissioner is authorized

SUPPLEMENT

and directed to supervise and direct the administration of the Service, and, subject to the limitations contained in section 103 of the Immigration and Nationality Act and Part 6 of this chapter, to administer and enforce the Immigration and Nationality Act and all other laws relating to immigration, naturalization, and nationality; and for such purposes he is authorized to exercise or perform any of the powers, privileges, and duties conferred or imposed upon the Attorney General thereby, including the authority to promulgate regulations under Subchapters B, and C of this chapter.

(b) *Designation and appointment of special inquiry officer.* The Commissioner may designate, select, and appoint as a special inquiry officer any immigration officer whom he deems specially qualified to exercise the powers and perform the duties of a special inquiry officer as set forth in the Immigration and Nationality Act and this chapter. The Commissioner shall issue to each officer so appointed a certificate under his signature bearing the seal of the Service. Such certificate shall state, and shall be accepted in any proceeding as evidence, that the officer to whom the certificate is issued has the authority to exercise the powers and perform the duties of a special inquiry officer as provided in the Immigration and Nationality Act and in this chapter.

§ 9.2 *Authority of Assistant Commissioner, Examinations Division.* The powers, privileges, and duties conferred or imposed upon officers or employees of the Service under this chapter with respect to the inspections, examinations, and hearing programs of the Service, are hereby conferred or imposed upon the Assistant Commissioner, Examinations Division, including:

(a) Applications for waiver of ground of inadmissibility as provided in section 212 (d) (3) of the Immigration and Nationality Act and Part 212 of this chapter, but only in those cases where such applications have been recommended by the Secretary of State or by a consular officer.

(b) Final determinations regarding qualifications of aliens for the benefits of section 212 (a) (28) (I) (ii) of the Immigration and Nationality Act.

§ 9.3 *Authority of Assistant Commissioner, Investigations Division.* The powers, privileges, and duties conferred or imposed upon officers or employees of the Service under this chapter with respect to the investigation programs of the Service are hereby conferred or imposed upon the Assistant Commissioner, Investigations Division.

§ 9.4 *Authority of Assistant Commissioner, Enforcement Division.* The powers, privileges, and duties conferred or imposed upon officers or employees of the Service under this chapter with respect to the

IMMIGRATION AND NATIONALITY ACT

border patrol, detention, deportation, and parole programs of the Service are hereby conferred or imposed upon the Assistant Commissioner, Enforcement Division.

§ 9.5 Authority of Assistant Commissioner, Administrative Division. The function of requesting information from other Government agencies regarding the identity and location of aliens as provided for in sections 290 (b) and (c) of the Immigration and Nationality Act is conferred upon the Assistant Commissioner, Administrative Division, with related functions.

§ 9.5a Authority of Regional Commissioners. The powers, privileges, and duties conferred or imposed upon officers or employees of the Service under this chapter with respect to the following-described matters are hereby conferred or imposed upon the regional commissioners:

(a) Petitions for immigrant status pursuant to the provisions of sections 204 and 205 of the Immigration and Nationality Act and Parts 204, 205, and 206 of this chapter.

(b) Applications to import nonimmigrants pursuant to the provisions of section 214 of the Immigration and Nationality Act and Parts 214h and 206 of this chapter.

(c) Waiver of passport and visa requirements in particular cases of immigrants in accordance with Part 211 of this chapter.

(d) Nonresident aliens' border crossing identification cards as defined or provided by section 101 (a) (6) of the Immigration and Nationality Act and Part 212 of this chapter.

(e) Applications for consent to apply or reapply because inadmissible to the United States under paragraph (16) or (17) of section 212 (a) of the Immigration and Nationality Act and applications for waiver of excludable grounds under section 5 or 7 of the Act of September 11, 1957, as provided in Part 212 of this chapter.

(f) Applications for waiver of ground of inadmissibility of certain resident or nonresident aliens as provided in section 212 (c) or (d) (3) of the Immigration and Nationality Act and Part 212 of this chapter, except as otherwise provided in § 9.2.

(g) Parole of aliens into the United States, and the conditions thereof as provided in section 212 (d) (5) of the Immigration and Nationality Act and Part 212 of this chapter.

(h) Waiver of nonimmigrant passport and visa requirements, acting jointly with the Secretary of State, or his authorized representative, if any, in individual cases of unforeseen emergency, as provided by section 212 (d) (4) of the Immigration and Nationality Act.

(i) Admission on bond of aliens excludable because they are likely to become public charges or because of certain physical defects,

SUPPLEMENT

diseases, or disabilities as provided in section 213 of the Immigration and Nationality Act and Part 213 of this chapter.

(j) Determinations as to the time for, and conditions under, which nonimmigrants may be admitted to the United States, and as to applications for extension of their temporary stay, as provided in section 214 (a) of the Immigration and Nationality Act, Title V of the Agricultural Act of 1949, as amended, and section 201 of the United States Information and Educational Exchange Act of 1948, as amended, and Parts 214 to 214m inclusive, of this chapter.

(k) Determinations as to whether escorts shall accompany aliens in transit through the United States as provided in section 214 of the Immigration and Nationality Act and Part 214c of this chapter.

(l) Petitions for approval of schools and the withdrawal of such approval as provided in section 101 (a) (15) (F) of the Immigration and Nationality Act and Part 214f of this chapter.

(m) Applications for waiver of ground of inadmissibility for certain immigrant laborers as provided in section 212 (a) (14) of the Immigration and Nationality Act and Part 212a of this chapter.

(n) Applications for reentry permits as provided in section 223 of the Immigration and Nationality Act and Part 223 of this chapter.

(o) Designation, and withdrawal of designation, of ports of entry for aliens arriving by vessel or by land transportation as provided in the statement of organization of the Service, and designation, and withdrawal of designation, of airports as international airports for entry of aliens as provided in Part 239 of this chapter.

(p) Detention and designation of the place of detention of aliens as provided by sections 232 and 233 of the Immigration and Nationality Act and Parts 232 and 233 of this chapter.

(q) Exclusion of aliens on grounds relating to the safety and security of the United States and determinations in connection with such cases, as provided in section 235 (c) of the Immigration and Nationality Act and Part 235 of this chapter.

(t) Stay of deportation of excluded aliens as provided in section 237 of the Immigration and Nationality Act and Part 237 of this chapter.

(u) Issuance and cancellation of warrants of arrests and orders to show cause prior to hearing as provided in section 242 of the Immigration and Nationality Act and Part 242 of this chapter.

(v) Voluntary departure of aliens prior to hearing as provided in section 242 (b) of the Immigration and Nationality Act and Part 242 of this chapter.

(w) Continuation of detention of aliens or release of aliens from custody as provided in section 242 of the Immigration and Nationality Act and Part 242 of this chapter.

IMMIGRATION AND NATIONALITY ACT

(x) Detention, conditions of release, and revocation of bond or parole, of aliens as provided in section 242 of the Immigration and Nationality Act and Part 242 of this chapter.

(y) Designation of the countries to which and at whose expense aliens shall be deported and determination as to whether an attendant is required as provided in section 243 of the Immigration and Nationality Act and Part 243 of this chapter.

(z) Stay of execution of warrants and orders of deportation as provided in section 243 of the Immigration and Nationality Act and Part 243 of this chapter.

(aa) Adjustment of status to persons admitted for permanent residence as provided in section 245 of the Immigration and Nationality Act, section 9 or 13 of the Act of September 11, 1957, and Part 245 of this chapter.

(bb) Rescission of adjustment of status as provided in section 246 of the Immigration and Nationality Act and Part 246 of this chapter.

(cc) Adjustment of the status of aliens lawfully admitted for permanent residence to that of certain nonimmigrant classes as provided in section 247 of the Immigration and Nationality Act and Part 247 of this chapter.

(dd) Change of status of aliens from one nonimmigrant class to another nonimmigrant class as provided in section 248 of the Immigration and Nationality Act and Part 248 of this chapter.

(ee) Creation of record of lawful admission for permanent residence, as provided by section 249 of the Immigration and Nationality Act and Part 249 of this chapter.

(ff) Determinations of applications for removal of aliens who have fallen into distress, as provided in section 250 of the Immigration and Nationality Act and Part 250 of this chapter.

(gg) Removal from the United States of aliens who have fallen into distress as provided in section 250 of the Immigration and Nationality Act and Part 250 of this chapter.

(jj) Replacement of alien-registration receipt cards under Part 264 of this chapter.

(kk) Issuance of subpoenas as provided in section 235 (a) of the Immigration and Nationality Act and Part 287 of this chapter.

(ll) Control and guarding of boundaries and borders of the United States against the illegal entry of aliens and the fixing of boundary distances as provided in section 287 of the Immigration and Nationality Act and Part 287 of this chapter.

(mm) Applications for residence and physical presence benefits under section 316 of the Immigration and Nationality Act and Parts 316a and 317 of this chapter and determinations that employers are American institutions of research or public international organiza-

SUPPLEMENT

tions within the meaning of section 316 (b) or 319 (b) of the Immigration and Nationality Act.

(pp) Applications for transfer of petitions for naturalization under section 335 (i) of the Immigration and Nationality Act and Part 334 of this chapter.

(qq) Consent to the withdrawal of petitions for naturalization or dismissal for want of prosecution under section 335 (e) of the Immigration and Nationality Act and Part 334 of this chapter.

(rr) Designation of employees of the Service to conduct preliminary examinations upon petitions for naturalization under section 335 (b) of the Immigration and Nationality Act and Part 335 of this chapter.

(ss) Assignment of examining officers at preliminary examinations upon petitions for naturalization under Part 335 of this chapter.

(tt) Waivers of personal investigation of petitioners for naturalization under section 335 (a) of the Immigration and Nationality Act and Part 335c of this chapter.

(uu) Applications for corrections of certificates of naturalization under Part 338 of this chapter.

(vv) Applications for certificates of citizenship under Part 341 of this chapter.

(ww) Applications for certificates of naturalization and repatriation under section 343 (a) of the Immigration and Nationality Act and Part 343 of this chapter.

(xx) Applications for naturalization and citizenship papers replaced under section 343 (b) of the Immigration and Nationality Act and Part 343a of this chapter.

(yy) Applications for special certificates of naturalization under section 343 (c) of the Immigration and Nationality Act and Part 343b of this chapter.

(zz) Admission of immigrants pursuant to the provisions of section 211 (c) and (d) of the Immigration and Nationality Act.

(aaa) Adjustment of immigration status as provided in section 4 of the Displaced Persons Act, as amended, and section 6 of the Refugee Relief Act of 1953 and Part 245a of this chapter.

(bbb) Review of certain designated examiner recommendations as to final disposition of petitions for naturalization by courts under Part 335 of this chapter.

(ccc) Applications for preexamination under Part 235a of this chapter.

(ddd) Determinations regarding qualifications of aliens for the benefits of section 212 (a) (28) (I) (i) of the Immigration and Nationality Act.

IMMIGRATION AND NATIONALITY ACT

(eee) Waiver of the requirement that certain exchange aliens be resident and physically present in a cooperating country for an aggregate period of two years following departure from the United States, as provided in section 201 of the United States Information and Educational Exchange Act of 1948, as amended. (Sec. 2, Reorganization Plan 2, 1950, 64 Stat. 1261, note fol. 5 U. S. C. 133z-15.)

§ 9.5b *Authority of District Directors.* Except as otherwise provided, district directors are authorized to grant or deny any formal application or petition in any case provided for in this chapter.

§ 9.6 *Reservation of authority.* The powers, privileges, and duties conferred or imposed by this chapter upon officers or employees of the Service other than those referred to in this section shall be in addition to, and not in substitution for, those conferred or imposed by this part upon the assistant commissioners and the regional commissioners. The powers, privileges, and duties conferred or imposed by this chapter upon officers or employees of the Service other than the Commissioner shall be in addition to, and not in substitution for, those conferred upon the Commissioner by this part. Concurrent and coexistent powers and authority with respect to all delegations made by this chapter are retained by the Attorney General.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS

Sec.

- 103.1 Delegations of authority.
- 103.2 Formal applications and petitions.
- 103.3 Appeals.
- 103.4 Certifications.
- 103.5 Reopening or reconsideration.
- 103.6 Immigration bonds.
- 103.7 Records and fees.

§ 103.1 *Delegations of authority.* Without divesting the Commissioner of any of the powers, privileges, and duties delegated to him by the Attorney General under the immigration and naturalization laws of the United States, coextensive authority is hereby delegated to the following-described officers of the Service:

(a) *Associate Commissioner, Operations.* All of the operational activities of the Service.

(1) *Deputy Associate Commissioner, Domestic Control.* The operational activities of the Service relating to investigations and enforcement.

(i) *Assistant Commissioner, Investigations.* The investigations and administrative prosecution activities of the Service.

(ii) *Assistant Commissioner, Enforcement.* The border patrol activities of the Service.

SUPPLEMENT

(2) *Deputy Associate Commissioner, Travel Control.* The operational activities of the Service relating to authorizations, Service activities outside the United States, and inspections at ports of entry.

(i) *Assistant Commissioner, Examinations.* The authorization activities of the Service.

(ii) *Assistant Commissioner, Special Projects.* The Service activities outside the United States, including those in Guam.

(iii) *Assistant Commissioner, Inspections.* The inspection activities of the Service at ports of entry.

(b) *Associate Commissioner, Management.* All of the management activities of the Service.

(1) *Deputy Associate Commissioner, Security.* The management activities of the Service, relating to field inspections, security, intelligence, and naturalization.

(i) *Assistant Commissioner, Field Inspection and Security.* The field inspection, intelligence, and security activities of the Service.

(ii) *Assistant Commissioner, Naturalization.* The naturalization activities of the Service.

(2) *Deputy Associate Commissioner, Administrative Services.* The management activities of the Service relating to administration, detention, and deportation.

(i) *Assistant Commissioner, Administration.* The personnel, budget, fiscal, statistics, procurement, and records activities of the Service.

(ii) *Assistant Commissioner, Detention and Deportation.* The detention and deportation activities of the Service.

(c) *General Counsel.* The legal advisory, legislative, and litigation activities of the Service.

(d) *Chief Special Inquiry Officer.* The exclusion and expulsion hearing activities of the Service.

(e) *Regional commissioners.* The operational activities of the Service within their respective regional areas, including all appellate jurisdiction specified in this chapter not reserved to the Board of Immigration Appeals or to district directors outside the United States.

(f) *District directors.* Under the executive direction of a regional commissioner (except district directors outside the United States who operate under the executive direction of the Assistant Commissioner, Special Projects), the grant or denial of any application or petition submitted to the Service or the initiation of any authorized proceeding in their respective district.

(g) *Officers in charge.* The supervision of inspection at ports of entries and the authorizations of extensions of nonimmigrant admis-

IMMIGRATION AND NATIONALITY ACT

sion periods and of voluntary departure prior to the commencement of deportation hearings. Officers in charge outside the United States have the same powers with respect to petitions and applications submitted by citizens or aliens residing in their respective areas as are conferred on district directors in the United States and final appeals from their decisions on applications for waiver of grounds of excludability and ineligibility for visas under the authority of sections 5 and 7 of the Act of September 11, 1957, are vested in the several district directors outside the United States.

(h) *Special inquiry officers.* Following selection by the Commissioner, the exercise of the powers and duties specified in this chapter regarding the conduct of exclusion and expulsion hearings.

§ 103.2 *Formal applications and petitions.* Every formal application or petition shall be filed in accordance with the instructions contained thereon, such instructions being hereby incorporated into the particular section of the regulations requiring its submission. A person or guardian may file on behalf of a son, daughter, or ward under 14 years of age. Any required oath may be administered by an immigration officer or person generally authorized to administer oaths. The decision-rendering Service officer may, in his discretion, require the submission of additional evidence, including blood tests, may require the taking of testimony, and may direct the making of any necessary investigation. Any allegations made in addition to, or in substitution for, those originally made shall be made under oath and filed in the same manner as the original application or petition or noted on the original application or petition and acknowledged under oath thereon. Formal applications or petitions received in any Service office shall be stamped to show the time and date of their actual receipt and shall be regarded as filed when so stamped unless returned because they are improperly executed. Foreign language documents submitted shall be accompanied by certified English translations.

§ 103.3 *Appeals.* When an alien or other party affected is entitled to appeal to another Service officer, he shall be given written notice that he may appeal from such decision, and that such appeal may be taken within 15 days after the mailing of the notification of decision, accompanied by a supporting brief and a fee of \$10, by filing Notice of Appeal Form I-290B, which shall be furnished with the written notice. For good cause shown, the time within which the brief may be submitted may be extended. The party taking the appeal may, prior to appellate decision, file a written withdrawal of such appeal.

SUPPLEMENT

§ 103.4 *Certifications.* The Commissioner, regional commissioners, associate commissioners, deputy associate commissioners, and assistant commissioners within their respective areas of responsibility, may direct that any case or class of cases be certified for decision. The alien or other party affected shall be given notice on Form I-290C of such certification and of his right to submit a brief within 10 days from receipt of the notice. The record of the case shall be certified and forwarded upon receipt of the brief, or the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief.

§ 103.5 *Reopening or reconsideration*—(a) *General.* A proceeding provided for in this chapter may be reopened or the decision made therein reconsidered for proper cause upon motion made by the party affected and granted by the officer who has jurisdiction over the proceeding or who made the decision. When the alien is the moving party, a motion to reopen or to reconsider shall be filed in duplicate, accompanied by a supporting brief, if any, and a fee of \$10, with the district director where the proceeding was conducted for transmittal to the officer having jurisdiction. When an officer of the Service is the moving party, a copy of the motion shall be served on the alien or other party in interest and the motion, together with proof of service, shall be filed directly with the officer having jurisdiction. The party opposing the motion shall have 10 days from the date of service thereof within which he may submit a brief, which period may be extended. If the officer who originally decided the case is unavailable, the motion may be referred to another officer. A motion to reopen shall state the new facts to be proved at the reopened hearing and shall be supported by affidavits or other evidentiary material. A motion to reconsider shall state the reasons for reconsideration and shall be supported by such precedent decisions as are pertinent. Rulings upon motions to reopen or motions to reconsider shall be by written decision.

§ 103.6 *Immigration bonds*—(a) *Acceptable sureties.* Except when cash is deposited pursuant to Part 213 of this chapter, only a company holding a certificate from the Secretary of the Treasury under 6 U. S. C. 6-13 as an acceptable surety on Federal bonds, or a surety who deposits United States bonds or notes of the class described in 6 U. S. C. 15 and Treasury Department regulations issued pursuant thereto and which are not redeemable within one year from the date they are offered for deposit is an acceptable surety.

(b) *Extension agreements; consent of surety; collateral security.* A district director is authorized to approve a bond which is prepared

IMMIGRATION AND NATIONALITY ACT

on a form approved by the Commissioner, a formal agreement to extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on Form I-312 or Form I-313. All other matters relating to bonds, including a power of attorney not executed on Form I-312 or Form I-313 and a request for delivery of collateral security to other than the depositor or his approved attorney in fact, shall be forwarded to the regional commissioner for approval.

(c) *Violation of conditions; cancellation.* The district director having jurisdiction over the place where the bond is retained shall finally determine whether a bond shall be declared breached or cancelled, and shall notify the obligors in writing on Form I-391 or Form I-323 of his decision.

§ 103.7 *Records and fees*—(a) *Authority to release information and certify records.* The Commissioner, regional commissioners, associate commissioners, deputy associate commissioners, assistant commissioners, the General Counsel, and district directors may furnish, upon application therefor, copies of Service records, or information therefrom, and may certify that any record is a true copy. The Chief, Records Administration and Information Branch, Central Office, may certify as to the nonexistence in the records of the Service of an official record. There shall be paid in advance for furnishing any person or agency (other than an officer or agency of the United States or of any State or any subdivision thereof for official use) copies of any part of, or information from, the records of the Service, a fee of 25 cents per folio of one hundred words or fraction thereof, with a minimum fee of 50 cents for any such service; an additional fee of \$1.00 is required for certification under seal.

(b) *Remittances.* Fees shall be submitted with any formal application or petition prescribed in this chapter and shall be in the amount prescribed by law or regulation. When any discretionary relief in exclusion or deportation proceedings is granted absent an application and fee therefor, the district director having jurisdiction over the place where the original proceeding was conducted shall require the filing of the application and the payment of the fee. Every remittance shall be accepted subject to collection. A receipt issued by a Service officer for any such remittance shall not be binding if the remittance is found uncollectible. Fees in the form of postage stamps shall not be accepted. Remittances shall be made payable to the "Immigration and Naturalization Service, Department of Justice," except that in the case of applicants residing in the Virgin Islands of the United States, the remittances shall be made

SUPPLEMENT

payable to the "Commissioner of Finance of the Virgin Islands," and, in the case of applicants residing in Guam, the remittances shall be made payable to the "Treasurer, Guam."

(c) <i>Additional fees.</i> In addition to the fees enumerated in sections 281 and 344 of the act, the following fees and charges are prescribed:	
For an annual table on "Passenger Travel Reports via Sea and Air" _____	\$ 0.20
For set of six annual tables entitled "Passenger Travel Reports via Sea and Air" _____	1.00
For filing application for alien laborer's permit in lieu of one lost, mutilated, or destroyed _____	1.00
For search of arrival record for personal benefit _____	3.00
For filing application for alien registration receipt card in lieu of one lost, mutilated, or destroyed, or in changed name, or in lieu of form other than Form I-151 _____	5.00
For filing application for permission to reapply for excluded or deported aliens, aliens who have fallen into distress and have been removed, aliens who have been removed as alien enemies, or aliens who have been removed at Government expense in lieu of deportation _____	5.00
For filing application for certificate of citizenship under section 309 (c) _____	5.00
For filing application for passport or visa waiver prior to or at the time application is made for temporary admission to the United States _____ ¹	10.00
For filing application for visa waiver when application is made for admission as a returning resident _____ ¹	10.00
For filing application for passport waiver prior to or at the time application is made for permanent admission _____ ¹	10.00
For filing application for section 316 (b) or 317 benefits _____	10.00
For filing appeal from, or motion to reopen or reconsider, any decision under the immigration laws, except an exclusion or deportation proceeding. (The minimum fee of \$10 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision.) _____	10.00
For filing application for waiver of grounds for exclusion contained in section 212 (a) (14) of the act _____	10.00
For annual subscription for "Passenger Travel Reports via Sea and Air" _____	10.00

IMMIGRATION AND NATIONALITY ACT

For filing appeal from, or a motion to reopen or reconsider, a decision in an exclusion or deportation proceeding. (The minimum fee of \$25 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision.)	25.00
For filing application for school approval	25.00
For filing application for discretionary relief under section 212 (c)	25.00
For filing application for discretionary relief under section 212 (d) (3), except in an emergency case, or the granting of the application is in the interest of the United States Government	25.00
For filing application for stay of deportation under Part 243 of this chapter, except when made concurrently with a motion to reopen or reconsider a decision in a deportation proceeding	25.00
For filing application for adjustment of status under section 9 or 13 of the act of September 11, 1957. (The fee is not required of an alien who has paid the fee for filing an application for preexamination.)	25.00
For special statistical tabulations a charge will be made to cover the cost of the work involved.	

¹ Plus communication costs.

Page 296

PART 10—FORMAL APPLICATIONS AND PETITIONS

§ 10.1 *General.* Every formal application or petition shall be submitted in accordance with the instructions accompanying it or contained therein, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. Such applications shall not be accepted and shall be returned if improperly executed. A person or guardian may file a formal application or a petition on behalf of a son, daughter, or ward under 14 years of age. Except as otherwise provided in this chapter, a separate application or petition shall be filed by each applicant or petitioner. Any oath required in the execution of a formal application or a petition may be administered in the United States by an immigration officer or by any other person authorized generally to administer oaths. The Service officer authorized to make decisions may, in his discretion, require the submission of additional evidence, including blood tests where that is deemed helpful and appropriate;

SUPPLEMENT

may require the testimony of the applicant, petitioner, or other person, and may direct the making of any investigation which he deems necessary to establish the truth or falsity of the allegations in the application or petition and the eligibility of the applicant or petitioner for the requested right or privilege. Any allegations made in addition to or in substitution for, any of those contained in the original application or petition shall be made under oath and filed in the same manner as the original application or petition or noted on the original application or petition and acknowledged under oath thereon. Formal applications or petitions delivered in person or by mail to any Service office shall be stamped to show the time and date of their actual receipt and shall be regarded as filed when so stamped unless they are returned because they are improperly executed. All documents in a foreign language which are submitted as supporting evidence shall be accompanied by certified English translations thereof.

Page 297

PART 204—PETITION FOR IMMIGRANT STATUS AS A MINISTER OR AS A PERSON WHOSE SERVICES ARE NEEDED URGENTLY

Sec.

- 204.1 Definition.
- 204.2 Petition.
- 204.4 Petitions; additional requirements.

§ 204.1 *Definition.* As used in section 101 (a) (27) (F) of the act and this part, the term "minister of a religious denomination" means a person duly authorized by a recognized religious sect or denomination to conduct religious worship, and to perform other duties usually performed by a regularly ordained pastor or clergyman. Lay preachers not authorized to perform the duties usually performed by a regularly ordained pastor or clergyman, and cantors, or nuns, do not come within this definition.

§ 204.2 *Petition.* The petition required by section 204 (b) of the act shall be filed by the person, institution, firm, organization, or governmental agency for whom the work, labor, or services are to be performed on Form I-129A for nonquota classification under section 101 (a) (27) (F) (i) of the act as a minister of a religious denomination and on Form I-129 for quota classification under section 203 (a) (1) (A) of the act as an alien whose services are needed urgently in the United States. The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter (page 291).

Subparagraph (1) of paragraph (a) of § 204.4 is amended so that, when taken with the introductory material, it will read as follows:

IMMIGRATION AND NATIONALITY ACT

§ 204.4 *Petitions; additional requirements*—(a) *For petitioners filing Form I-129.* A petitioner filing a petition on Form I-129 shall comply with the following additional requirements:

The petitioner shall, if requested by the Service, attach to the petition a clearance order bearing a statement from the United States Employment Service that qualified persons are not available within the United States to perform the work, labor, or services which are to be performed by the beneficiary. In connection with a petition for a beneficiary who is to perform work, labor, or services in Guam, a clearance order issued by the Employment Service of the Territory of Guam shall be accepted in lieu of that issued by the United States Employment Service.

Page 300

PART 205—PETITION FOR IMMIGRANT STATUS AS RELATIVE OF
UNITED STATES CITIZEN, LAWFUL RESIDENT ALIEN, OR
ELIGIBLE ORPHAN

Sec.

- 205.1 Petition.
- 205.2 Eligible orphan.
- 205.11 Petition; Documents in support.

§ 205.1 *Petition.* A petition by a United States citizen under section 205 (b) of the act shall be filed on Form I-133. A petition by an alien under section 205 (b) of the act shall be filed on Form I-133A. The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of his right to appeal to the Board within 15 days after the mailing of the notification of decision in accordance with the provisions of Part 3 of this chapter.

Except as otherwise provided in this section, a petition on Form I-133 or on Form I-133A may include therein more than one beneficiary. If the petition is for more than one beneficiary and applications for visas will be made to more than one American consular office, a copy of the petition shall be submitted for each such consular office. A separate petition shall be filed for each beneficiary who is the brother, sister, son, or daughter of a United States citizen entitled to a preference under section 203 (a) (4) of the Immigration and Nationality Act.

§ 205.2 *Eligible orphan.* A petition by a United States citizen and spouse under section 4 (b) (2) (B) of the act of September 11, 1957, shall be filed on Form I-600. The petitioners shall be notified of the decision and, if the petition is denied, of the reasons therefor and of their right to appeal in accordance with the provisions of Part 103 of this chapter (page 291).

SUPPLEMENT

Paragraph (b) of § 205.11, *Petition*, is amended to read as follows:

(b) *Documents in support of petition.* The petition shall be supported by documentary evidence establishing the qualifications and eligibility of the beneficiary or beneficiaries for the classification requested and shall include the information required by the Form I-133, if the petitioner is a citizen of the United States, or the information required by the Form I-133A, if the petitioner is a lawful resident alien.

Page 301

PART 206—REVOCATION OF APPROVAL OF PETITIONS

Sec.

- 206.1 Automatic revocation.
- 206.2 Revocation on notice.
- 206.3 Revocation of approval of petition.
- 206.11 Notice of revocation.
- 206.21 Revocation on notice; procedure.
- 206.22 Notice of revocation.

§ 206.1 *Automatic revocation.* The approval of a petition made under section 204, 205, or 214 (c) of the act and in accordance with Part 204, 205, or 214h of this chapter is revoked as of the date of approval in any of the following circumstances:

(a) As to a petition approved under section 204 or 214 (c) of the Immigration and Nationality Act:

(1) The beneficiary is an alien seeking classification as a nonquota immigrant under section 101 (a) (27) (F) (i) of the Immigration and Nationality Act and is not issued a visa under the classification approved within one year of the date on which the petition was approved.

(2) The beneficiary is an alien seeking classification as a nonimmigrant under section 101 (a) (15) (H) of the Immigration and Nationality Act and is not issued a visa on or prior to the expiration date of approval shown on the approved petition.

(3) The beneficiary is an alien seeking classification under section 203 (a) (1) (A) of the Immigration and Nationality Act and is not issued a visa on or prior to the expiration date of approval shown on the approved petition. In the case of any such petition terminated by the expiration of the period for which approval was given, the Attorney General may, in his discretion, reaffirm such approval for an additional period.

(4) The petitioner dies, goes out of business, or files a written withdrawal of the petition before the beneficiary arrives in the United States to apply for admission under the classification approved.

IMMIGRATION AND NATIONALITY ACT

(b) As to a petition approved under section 205 of the act:

(1) The beneficiary is an alien seeking classification as a nonquota immigrant under section 101 (a) (27) (A) and is not issued a visa under the classification approved within two years of the date on which the petition was approved.

(2) The beneficiary is an alien seeking classification under section 203 (a) (2), (3), or (4) and is not issued a visa under the classification approved within three years of the date on which the petition was approved or during the quota year in which such three-year period expired.

(3) The petitioner loses his United States citizenship or his status as an alien lawfully admitted for permanent residence, whichever was applicable to the approval of the petition, or dies, before the beneficiary arrives in the United States to apply for admission under the classification approved.

(4) As to a spouse beneficiary, the marriage of the petitioner to the beneficiary terminates by death, divorce, or annulment before the beneficiary arrives in the United States to apply for admission under the classification approved.

(5) As to a child beneficiary, the beneficiary is married before he arrives in the United States to apply for admission under the classification approved, or the beneficiary reaches the 21st anniversary of his birth before he arrives in the United States to apply for admission under the classification approved. In any such case involving a son or daughter of a United States citizen petitioner, the approved petition will continue to be valid for the purposes of section 203 (a) (4) until the expiration of three years from the date of its approval or during the quota year in which such three-year period expired.

§ 206.2 *Revocation on notice.* The approval of a petition made under section 204, 205, or 214 (c) of the Immigration and Nationality Act and in accordance with Part 204, 205, or 214h of this chapter may be revoked on any ground other than those specified in § 206.1 by any officer authorized to approve such petition when the propriety of such revocation is brought to the attention of the Service, including request for revocation or reconsideration made by consular officers.

PART 206—REVOCATION OF APPROVAL OF PETITIONS

The last sentence of § 206.3 *Procedure* is amended to read as follows: "If upon reconsideration the approval previously granted is revoked, the petitioner shall be informed of the decision with the reasons therefor and shall have 15 days after the mailing of the notification of decision within which to appeal as provided in Part 3 of this chapter if the petition initially was approved for classification under

SUPPLEMENT

section 205 of the Act, or as provided in Part 103 of this chapter if the petition initially was approved for classification under section 204 or 214 (c) of the Act, and the consular office having jurisdiction over the visa application shall be notified of the revocation."

§ 206.11 *Notice of revocation.* In any case in which it shall appear to a district director that the approval of a petition has been automatically revoked under and by virtue of § 206.1, such district director shall cause a notice of such revocation to be sent promptly to the Visa Office of the Bureau of Security and Consular Affairs, Department of State, and a copy of such notice to be mailed to the petitioner's last known address.

§ 206.21 *Revocation on notice; procedure.* Revocation of approval of a petition under § 206.2 shall be made upon notice to the petitioner who shall be given an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval. If upon reconsideration, the approval previously granted is revoked, the petitioner shall be informed of the decision with the reasons therefor and shall have ten days from the receipt of notification of the decision within which to appeal to the Board as provided in Part 6 of this chapter if the petition initially was approved for classification under section 205 of the act, or to the regional commissioner as provided in Part 7 of this chapter if the petition initially was approved for classification under section 204 or 214 (c) of the act.

§ 206.22 *Notice of revocation.* In any case in which approval of a petition is revoked under §§ 206.2 and 206.21, the district director having administrative jurisdiction over the office in which the proceeding is pending shall cause notice of such revocation to be sent promptly to the Visa Office of the Bureau of Security and Consular Affairs, Department of State.

Page 303

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

Sec.

- 211.1 Visas.
- 211.2 Passports.
- 211.2a Immigrants not required to present visas or passports.
- 211.3 Authority to grant individual waivers.
- 211.4 Immigrants not required to present passports.
- 211.11 Resident alien's Border-Crossing Identification Card—(a) Form.

§ 211.1 *Visas.* A valid unexpired immigrant visa shall be presented by each arriving immigrant alien except an immigrant who (a) was born subsequent to the issuance of an immigrant visa to his

IMMIGRATION AND NATIONALITY ACT

accompanying parent and applies for admission during the validity of such a visa, or (b) is returning to an unrelinquished lawful permanent residence after a temporary absence abroad (1) not exceeding one year and presents a Form I-151 alien registration receipt card duly issued to him or (2) presents a valid unexpired reentry permit duly issued to him, or (3) satisfies the district director in charge of the port of entry that there is good cause for the failure to present the required document, in which case an application for waiver shall be made on Form I-193.

§ 211.2 Passports. A valid unexpired passport valid for the bearer's entry into a foreign country at least 60 days beyond the expiration date of his immigrant visa shall be presented by each arriving immigrant alien except an immigrant who (a) is the spouse, parent or unmarried son or daughter of a United States citizen, or (b) is the spouse or unmarried son or daughter of an alien lawful permanent resident of the United States, or (c) is returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad, or (d) is a stateless person or a person who because of his opposition to communism is unwilling or unable to obtain a passport from the country of his nationality, or (e) is a first-preference quota immigrant, or (f) satisfies the district director in charge of the port of entry that there is good cause for failure to present the required document, in which case an application for waiver shall be made on Form I-193.

§ 211.2a Immigrants not required to present visas or passports. Immigrants of the following-described classes applying for admission to the United States need not present visas or passports:

* * * * *

(c) Aliens (including alien crewmen) of the following-described classes who have been lawfully admitted for permanent residence and who are returning after a temporary absence:

* * * * *

An alien who is returning to the United States from a visit not exceeding 30 days to Canada, Mexico, Cuba, Haiti, Bermuda, or the Dominican Republic.

An alien crewman whose name appears on the visaed crew list of the vessel or aircraft on which he arrived in the United States or who presents an Alien Registration Receipt and Border Crossing Card (Form I-151) duly issued to him, if the alien is returning on the same vessel or aircraft on which he departed and without transhipment, or, if the alien is returning on an aircraft of the same transportation line within 30 days of his discharge in a foreign port.

SUPPLEMENT

An alien who departed from the United States as a member of the crew of a vessel or aircraft which has been sold and delivered abroad, if the laws of the United States or the contract of employment provide for the return of the crew to the United States, whether returning as a passenger or as a crewman.

An alien who departed from the United States as a member of the crew of a vessel or aircraft and who is returning to the United States as a passenger in accordance with the terms of the articles of the vessel or the aircraft on which he formerly served and who presents a Form I-151 duly issued to him.

An alien crewman who departed from the United States as a member of the crew of a vessel or aircraft and who is a consular passenger, or is repatriated after, and in accordance with the terms of, his discharge in a foreign port before a consular officer, but who, for any reason, cannot be considered as serving as a crewman on the vessel or aircraft on which he arrives at a port in the United States.

§ 211.3 Authority to grant individual waivers. Any alien (including an alien crewman) who has been lawfully admitted to the United States for permanent residence and who is applying for admission to the United States after a temporary absence may be granted a visa and passport waiver or a visa waiver, and any alien (including an alien crewman) who applies for admission to the United States as an immigrant may be granted a passport waiver by (a) the regional commissioner either at the time of or after the alien's application for admission to the United States, or (b) the district director or officer in charge having administrative jurisdiction over the port at which the alien applied for admission at the time of the alien's application for admission and prior to the submission of the case to a special inquiry officer, or (c) the special inquiry officer in determining the case referred to him for further inquiry as provided in section 235 of the Act, upon a determination by the respective officers enumerated above that presentation of a visa, or passport, or both, is impractical because of emergent circumstances over which the alien has no control and that undue hardship would result to such alien if such presentation is required: *Provided*, That during the time any case is pending before the Board a waiver under this section may be granted only by the Board.

§ 211.4 Immigrants not required to present passports. Aliens of the following-described classes (including alien crewmen) who apply for admission to the United States as immigrants are not required to present passports:

(a) An alien who has been lawfully admitted for permanent residence and who is returning after a temporary absence and who

IMMIGRATION AND NATIONALITY ACT

presents a valid unexpired nonquota immigrant visa issued pursuant to the provisions of section 101 (a) (27) (B) of the Immigration and Nationality Act.

- (b) An immigrant who is a stateless person.
- (c) An immigrant who is the spouse or child of a United States citizen or an alien lawfully admitted to the United States for permanent residence: *Provided*, That such immigrant is the beneficiary of a petition approved under the provisions of section 205 (b) of the Immigration and Nationality Act.
- (d) An immigrant who is a national of, and is applying for an immigrant visa outside of, a Communist-controlled country, and who, because of his opposition to Communism, is unwilling to make application for a passport to, or unable to obtain a passport from, the government of such country.
- (e) An immigrant who is a member of the armed forces of the United States.

* * * * *

- (f) An immigrant who is the alien parent of a United States citizen.

Paragraph (a) of § 211.11 is amended to read as follows:

§ 211.11 *Resident Alien's Border-Crossing Identification Card*—
(a) *Form*. For the purposes of sections 211 (b) and 212 (a) (20) of the act and this part, Form I-151 (Alien-Registration Receipt Card) shall be accepted as a Resident Alien Border-Crossing Identification Card when in possession of and presented by the rightful holder thereof during the period of its validity.

Paragraph (d) of § 211.11 is revoked.

Pages 307, 652 and 692

PART 212—DOCUMENTARY REQUIREMENTS: NON-IMMIGRANTS;
WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE
ALIENS; PAROLE

DOCUMENTARY REQUIREMENTS FOR NONIMMIGRANTS

Section 212.1 is amended to read as follows:

§ 212.1 *Documentary requirements for nonimmigrants*. A valid unexpired visa and an unexpired passport, valid for the period set forth in section 212 (a) (26) of the Act, shall be presented by each arriving nonimmigrant alien except that the passport validity period for an applicant for admission who is a member of a class described in section 102 of the Act, is not required to extend beyond the date of his application for admission if so admitted, and except as otherwise provided in the Act, this chapter, and for the following classes:

SUPPLEMENT

(a) *Canadian nationals and British subjects.* A visa is not required of a Canadian national or British subject who has his residence in Canada or Bermuda, and a passport is not required of such a national or subject after a visit solely in the Western Hemisphere. A visa is not required of a British subject who has his residence in, and arrives directly from, the Cayman Islands, and who presents a certificate from the clerk of court of the Cayman Islands stating what, if anything, the court's criminal records show concerning him, and a certificate from the Office of Commissioner of the Cayman Islands stating what, if anything, its records show with respect to his political associations or affiliations.

(b) *British, French, and Netherlands nationals.* A visa is not required of a British, French, or Netherlands national who has his residence in British, French, or Netherlands territory, respectively, in the adjacent islands of the Caribbean area, for admission or stay in Puerto Rico, the Virgin Islands of the United States, or as an agricultural worker in the United States.

(c) *Mexican nationals.* A visa and a passport are not required of a Mexican national who is a military or civilian official or employee of the Mexican national, state, or municipal government, or of a member of the family of any such official or employee; or is in possession of a border crossing card on Form I-186 and is applying for admission in accordance with the terms thereon and the provisions of § 212.6. A visa is not required of a Mexican national who is a crewman employed on an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States, or is an alien embraced within the provisions of § 214.2 (k) of this chapter.

(d) *Cuban nationals.* A visa and a passport are not required of a Cuban national who is an official of the Cuban immigration service, or is a crewman serving on board a Cuban military or naval aircraft. A visa is not required of a Cuban national who is a crewman employed on an aircraft belonging to a Cuban company authorized to engage in commercial transportation into the United States.

(e) *Direct transits.* A visa and a passport are not required of an alien embraced within the provisions of § 214.2 (c) of this chapter. If an alien is of the class described in section 212 (d) (8) of the act, only a valid unexpired visa and a travel document valid for entry into a foreign country for at least 30 days from the date of admission to the United States are required.

(f) *Unforeseen emergency.* A visa and a passport are not required of a nonimmigrant who, either prior to his embarkation at a foreign port or place or at the time of arrival at a port of entry in the United

IMMIGRATION AND NATIONALITY ACT

States, satisfies the district director at the port of entry (after consultation with and concurrence by the Director of the Visa Office of the Department of State) that, because of an unforeseen emergency, he was unable to obtain the required documents, in which case a waiver application shall be made on Form I-193.

Page 310

§ 212.6 Aliens previously deported or removed, or who departed at Government expense; consent to reapply for admission. (a) Except as provided in § 236.13 (b) of this chapter and paragraph (b) of this section, an alien who is inadmissible to the United States under paragraph (16) or (17) of section 212 (a) of the act and who desires to apply for admission to the United States shall file an application for consent to reapply for admission to the United States on Form I-212 with the district director having administrative jurisdiction over the office in which were held the proceedings which resulted in the alien's deportation, removal or departure at Government expense.

(b) Except as otherwise provided in paragraph (a) of this section, an alien who is inadmissible to the United States under paragraph (16) or (17) of section 212 (a) of the act and who desires to enter the United States frequently across an international land border to purchase the necessities of life, or in connection with the business in which he is engaged, or for some other urgent reason, may file his application for consent to reapply for admission to the United States with the district director having administrative jurisdiction over the nearest port of entry adjacent to the alien's foreign residence.

(c) The applicant shall be notified of the decision and, if the application is denied of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter (page 291).

§ 212.7 Waiver of certain grounds of excludability. (a) An alien who is excludable and seeks a waiver under section 5 or 7 of the act of September 11, 1957, shall file an application on Form I-601 at the consular office considering the application for a visa for transmittal to the Service for decision. The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor and of his right to appeal, in accordance with the provisions of Part 103 of this chapter (page 291).

SUPPLEMENT

Page 315

PART 212a—ADMISSION OF CERTAIN ALIENS TO PERFORM SKILLED OR UNSKILLED LABOR

§ 212a.1 *Application.* The person, institution, firm, organization, or governmental agency for whom the excludable alien will perform skilled or unskilled labor may apply for a waiver under section 212 (a) (14) of the act. The application shall contain information under oath or affirmation and shall be supported by documentary evidence attesting to the alien's education, training, experience, and ability. In addition, there shall be submitted with the application a statement containing a complete description of the services to be performed, and information regarding the efforts made to secure persons in the United States to perform such services, and in what manner the alien's services will be substantially beneficial prospectively to the national economy, cultural interest, or welfare of the United States. The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter (Page 291).

Page 317

PART 213—ADMISSION OF ALIENS ON GIVING BOND OR CASH DEPOSIT

Sec.

- 213.1 Authority to admit under bond or cash deposit.
- 213.11 Form of public charge bond.

§ 213.1 *Authority to admit under bond or cash deposit.* An alien who applies for admission to the United States for permanent residence whose case is referred to the district director having administrative jurisdiction over the place where the examination for admission is being conducted, as provided in § 235.7 of this chapter, may be admitted to the United States in the discretion of such officer upon the furnishing of a bond on Form I-354, in the sum of not less than \$1,000, or, in lieu of such bond, upon depositing cash, which may be in the form of United States money orders or bank cashier checks, in the sum of not less than \$1,000 for the same purposes and subject to the same conditions as those set forth in Form I-354. If such officer does not so admit the alien, the special inquiry officer to whom the case is referred, as provided in § 235.7 of this chapter may, in his discretion, admit the alien upon the furnishing of bond or the depositing of cash as aforesaid.

§ 213.11 *Form of public charge bond.* All bonds, and all agreements covering cash deposits, given as a condition of admission of

IMMIGRATION AND NATIONALITY ACT

an alien under section 213 of the Immigration and Nationality Act shall be executed on Form I-354. If cash is deposited, the depositor shall give his power of attorney and agreement on Form I-304, authorizing the officers designated thereon to collect, assign, or transfer such deposit, in whole or in part, in case any of the conditions of the bond are violated; and the officer accepting such deposit shall give his receipt therefor on Form I-305.

Page 318

PART 214—ADMISSION OF NONIMMIGRANTS: GENERAL

Sec.

- 214.1 Time for which nonimmigrants may be admitted.
- 214.2 Conditions of nonimmigrant status.
- 214.3 Bonds.
- 214.4 Extension of period of temporary admission.
- 214.5 Change of status as affecting period of admission.
- 214.6 Limitation.

§ 214.1 *Time for which nonimmigrants may be admitted.* The maximum period for which a nonimmigrant may be admitted initially to the United States shall be whatever period the admitting officer deems appropriate to accomplish the intended purpose of the alien's temporary stay in the United States, except that

(a) In no event shall such period exceed any limit fixed by any of the other provisions of this chapter relating to particular nonimmigrant classes; and

(b) Except as provided in section 102 of the Immigration and Nationality Act, such period shall be subject to the provisions of section 212 (a) (26) of the Immigration and Nationality Act in the case of a nonimmigrant required to present a passport; and

(c) A nonimmigrant admitted to the United States upon a waiver of the passport requirement, shall not be admitted beyond a date six months prior to the end of the period during which he will be eligible for readmission to the country whence he came or for admission to some other country.

§ 214.2 *Conditions of nonimmigrant status.* An alien found admissible as a nonimmigrant under the Immigration and Nationality Act shall be admitted to the United States, and an alien after admission to the United States as a nonimmigrant or after acquisition of a nonimmigrant status under the Immigration and Nationality Act or any prior act shall be permitted to remain in the United States only upon the following conditions:

(a) That while in the United States he will maintain the particular nonimmigrant status under which he was admitted or such

SUPPLEMENT

other status as he may acquire in accordance with the provisions of the Immigration and Nationality Act or which he may have acquired in accordance with the provisions of any prior law.

(b) That he will depart from the United States within the period of his admission or any authorized extension thereof.

(c) That while in the United States he will not engage in any employment or activity inconsistent with and not essential to the status under which he is in the United States unless such employment or activity has first been authorized by the district director having administrative jurisdiction over the alien's place of temporary residence in the United States.

(d) That he will not remain in the United States beyond a date six months, or in the case of a nonimmigrant admitted prior to the effective date of the Immigration and Nationality Act, two months, prior to the end of the period during which he will be eligible for readmission to the country whence he came or for admission to some other country, as evidenced by a valid passport or other travel document.

(e) That he will fulfill such other conditions as the admitting immigration officer, in his discretion, may impose or may have imposed to insure that he will depart from the United States at the expiration of the time for which he was admitted, and that he will maintain the status under which he was admitted or which he may have lawfully acquired subsequent to his admission.

§ 214.3 *Bonds.* Except as may be otherwise specifically provided by the Immigration and Nationality Act and by any provisions of this chapter relating to particular classes of nonimmigrants, in the discretion of the district director having administrative jurisdiction over the port of entry or the special inquiry officer, or, pursuant to an order entered on appeal from the decision of a special inquiry officer, an alien applying for admission to the United States as a nonimmigrant may be required to post a bond in the sum of not less than \$500 as a condition precedent to his admission to the United States to insure that he will depart from the United States at the expiration of the time for which he is admitted and that he will maintain the status under which he is admitted or which he may subsequently acquire under the Immigration and Nationality Act: *Provided*, That no such bond shall be required as a condition to the admission of any alien within the classes described in section 102 of the Immigration and Nationality Act. Bond shall be furnished on Form I-317 or I-377 as the admitting officer shall determine.

IMMIGRATION AND NATIONALITY ACT

§ 214.4 *Extension of period of temporary admission.* An alien other than one admitted in transit under section 101 (a) (15) (C) of the Immigration and Nationality Act or section 3 (3) of the Immigration Act of 1924, who is maintaining the nonimmigrant status under which he is permitted to remain in the United States and whose period of admission has not expired, may apply on Form I-539 for and may be granted or denied an extension or extensions of the period of his temporary admission by an officer in charge of a suboffice or a district director subject to the following limitations and conditions:

- (a) All extensions shall be subject to the time limitations specified in § 214.1.
- (b) The alien shall establish that he has fulfilled, and agrees that he will continue to fulfill, all the conditions set forth in § 214.2 and such other conditions as may be imposed as conditions precedent to the granting of the extension, including, in the case of an alien admitted as a nonimmigrant or as a non-quota immigrant student prior to December 24, 1952, the condition that he shall present with his application for the extension a passport or other travel document valid for his readmission to the country whence he came or to some other country for six months after expiration of the period for which the extension is requested.
- (c) In any case in which the grant of the extension would authorize the alien to remain in the United States for a period not exceeding one year after arrival, the officer deciding the application may, in his discretion, require as a condition precedent to the granting of the extension that the alien furnish bond or continue to furnish bond or to furnish bond in different sum on the form and for the purposes stated in § 214.3.
- (d) No extension which will authorize the alien to remain in the United States for a period exceeding one year after arrival shall be granted unless there has been furnished, or is furnished, a bond on the form, for the purposes, and in the sum provided in § 214.3: *Provided*, That a district director may authorize the granting of such extension without bond or with bond in less sum.
- (e) Such other conditions and limitations as are prescribed by provisions of this chapter relating to particular classes of nonimmigrants.
- (f) A nonimmigrant alien crewman shall not be granted any extension which would permit him to remain in the United States for more than 29 days from the date of his initial temporary landing.
- (g) No appeal shall lie from the decision of the officer denying the application.

SUPPLEMENT

§ 214.5 *Change of status as affecting period of admission.* An alien admitted to the United States under the Immigration and Nationality Act or any prior act as a nonimmigrant, whose status is subsequently changed in accordance with the provisions of the Immigration and Nationality Act, shall be permitted to remain in the United States for such period of time as shall have been fixed in the decision changing his status or any authorized extension thereof, in no event to exceed the time he continues to maintain the status so acquired.

§ 214.6 *Limitation.* The provisions of this part shall not be applicable to a nonimmigrant agricultural worker applying for admission, or admitted, to the United States in accordance with the provisions of Title V of the Agricultural Act of 1949, as amended. The case of such alien shall be governed by the provisions of Part 214k of this chapter.

Page 321

PART 214a—ADMISSION OF NONIMMIGRANTS: FOREIGN GOVERNMENT OFFICIAL

Sec.

- 214a.1 Acceptance of classification.
- 214a.2 Limitation as to time for which alien may be admitted.
- 214a.4 Failure to maintain status.

§ 214a.1 *Acceptance of classification.* Whenever an alien who applies for admission to the United States as a nonimmigrant of one of the classes described in section 101 (a) (15) (A) of the Immigration and Nationality Act presents to the examining immigration officer at a port of entry in the United States a valid unexpired nonimmigrant visa duly issued to him by a consular officer under such classification, the immigration officer shall accept the consular officer's classification of the alien and admit the alien, if he is otherwise admissible to the United States, unless specifically directed to the contrary by the regional commissioner after consultation with the Department of State, in which event, the examining immigration officer shall take further action as provided in section 235 of the Immigration and Nationality Act. For the purposes of this part, the term "immediate family" as used in section 101 (a) (15) (A) of the Immigration and Nationality Act means aliens who are closely related to the principal alien by blood, marriage, or adoption, and who reside regularly in the household of the principal alien.

§ 214a.2 *Limitation as to time for which alien may be admitted.* The period of an alien's admission to the United States as a nonimmigrant of the class described in section 101 (a) (15) (A) (i) or (ii) of

IMMIGRATION AND NATIONALITY ACT

the Immigration and Nationality Act shall not exceed such time as the Secretary of State continues to recognize him as a member of such class. An alien of the class described in clause (iii) of section 101 (a) (15) (A) of the Immigration and Nationality Act shall not be admitted initially to the United States for more than one year.

§ 214a.4 *Failure to maintain status.* At such time as any official or employee described in clause (i) or clause (ii) of section 101 (a) (15) (A) of the Immigration and Nationality Act, or any official of a foreign government as described in section 3 (1) of the Immigration Act of 1924, as amended, is ineligible under the Immigration and Nationality Act and this chapter to remain in the United States in the status of such official or employee, any alien member of the immediate family of such official or employee, any attendant, servant, or personal employee of any such official or employee, and any member of the immediate family of such attendant, servant, or personal employee who has nonimmigrant status pursuant to section 101 (a) (15) (A) of the Immigration and Nationality Act or section 3 (1) of the Immigration Act of 1924, as amended, shall be regarded as having failed to maintain such status. This section shall not be construed as setting forth the sole ground on which the persons herein described may be regarded as having failed to maintain such status.

Page 323

PART 214c—ADMISSION OF NONIMMIGRANTS: TRANSIT ALIENS

Sec.

- 214c.1 Special prerequisites for admission as a transit without a visa.
- 214c.2 Limitation as to time for which transit aliens may be admitted.
- 214c.3 United Nations Headquarters District.

§ 214c.1 *Special prerequisites for admission as a transit without a visa.* Any alien, except a citizen and resident of the Union of Soviet Socialist Republics, Estonia, Latvia, Lithuania, Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, Albania, Peoples Republic of China, Peoples Democratic Republic of Korea (North Korea Regime), German Democratic Republic, and North Vietnam (Viet Minh), may apply for immediate and continuous transit through the United States. Such an alien must establish that he is admissible under the immigration laws; that he has confirmed and onward reservations to at least the next country beyond the United States (except that, if seeking to join a vessel or aircraft in the United States as a crewman, the vessel or aircraft will depart directly foreign, and his departure from the United States will be completed within a maximum of five calendar days after his arrival in the United States), and

SUPPLEMENT

that he has a document establishing his ability to enter some country other than the United States. Except for transit from one part of foreign contiguous territory to another part of the same territory, application for direct transit without visa must be made at one of the following ports of entry: Boston, Mass.; New York, N. Y.; Norfolk, Va.; Baltimore, Md.; Philadelphia, Pa.; Miami, Fla.; Tampa, Fla.; New Orleans, La.; San Antonio, Tex.; Dallas, Tex.; Houston, Tex.; Brownsville, Tex.; Los Angeles, Calif.; San Francisco, Calif.; Honolulu, T. H.; Seattle, Wash.; Portland, Oreg.; St. Paul, Minn.; Chicago, Ill.; Detroit, Mich.; Anchorage, Alaska; San Juan, P. R.; Charlotte Amalie, V. I.; Christiansted, V. I.; Agana, Guam. The acceptance of the privilege of such transit shall constitute an agreement by the alien and the carrier that at all times he is not aboard an aircraft which is in flight through the United States he shall be in the custody directed by the district director having administrative jurisdiction over the port of entry, and should he violate any of the terms of such admission, an agreement by the alien immediately to depart voluntarily from the United States without recourse to any type of hearing or proceeding provided for in this chapter.

§ 214c.2 Limitation as to time for which transit aliens may be admitted. An alien admitted to the United States as a nonimmigrant of the classes described in section 101 (a) (15) (C) of the act shall be admitted for a period of time fixed by the admitting officer, not to exceed 29 days.

§ 214c.3 United Nations Headquarters District. An alien of the class described in section 101 (a) (15) (C) of the act whose nonimmigrant visa by its own terms is limited to transit to and from the United Nations Headquarters District, if otherwise admissible under the immigration laws, shall be admitted on the additional conditions that he shall proceed directly to New York City and shall remain continuously in that city during his sojourn in the United States, departing therefrom only if required in connection with his departure from the United States and that he shall be in possession of a valid visa or other form of valid authority assuring his entry into the country whence he came or to some other foreign country following his sojourn in the United Nations Headquarters District.

IMMIGRATION AND NATIONALITY ACT

Page 325

PART 214e—ADMISSION OF NONIMMIGRANTS: TREATY TRADER

Sec.

- 214e.1 Definitions.
- 214e.2 Limitations on time for which admitted.
- 214e.4 Failure to maintain status.
- 214e.6 Trader and dependents admitted under Immigration Act of 1924.

§ 214e.1 *Definitions.* As used in this part, the term:

(a) "Trader" means (1) an alien admitted to the United States under the provisions of section 101 (a) (15) (E) of the Immigration and Nationality Act; or (2) an alien admitted to the United States under the provisions of section 3 (6) of the Immigration Act of 1924; or (3) an alien who after admission lawfully acquires a status under clause (1) or (2) of this paragraph; or (4) an alien who is readmitted to the United States on the basis of a re-entry permit lawfully issued under the provisions of paragraphs (a) (2) and (b) of section 223 of the Immigration and Nationality Act; or (5) an alien who was readmitted to the United States on the basis of a re-entry permit lawfully issued under the provisions of section 10 (g) of the Immigration Act of 1924, as amended.

(b) "Dependent" means a trader's alien spouse or alien child admitted under paragraph (a) (1), (2), (3), (4), or (5) of this section.

§ 214e.2 *Limitations on time for which admitted.* An alien admitted to the United States as a nonimmigrant of the class described in section 101 (a) (15) (E) of the Immigration and Nationality Act shall be admitted for a period of time fixed by the admitting officer.

§ 214e.4 *Failure to maintain status.* A trader or dependent shall be deemed to have failed to maintain status upon the occurrence of any one of the following events, which are not exclusive as to what shall constitute failure to maintain status:

(a) In the case of a trader:

(1) The termination of the treaty on which the status of trader has been based; or

(2) A change by a trader from the activities specified in clause (i) of section 101 (a) (15) (E) of the Immigration and Nationality Act to the activities specified in clause (ii) of said section or vice versa unless, prior to making such change, he obtains consent to do so from the district director having administrative jurisdiction over the district in which the trader resides.

(b) In the case of a dependent:

SUPPLEMENT

- (1) When the trader is no longer eligible to remain in the United States as a trader; or
- (2) When the trader dies; or
- (3) In the case of the dependent spouse, when the marriage to the trader terminates; or
- (4) In the case of the dependent child, when such child marries or reaches the 21st anniversary of his birth;

unless at the time of the happening of any such event after the effective date of the Immigration and Nationality Act, the dependent in his own right would be entitled to the status of a nonimmigrant of the class described in section 101 (a) (15) (E) of the Immigration and Nationality Act were he applying for admission to the United States in such status in possession of appropriate documents; or unless at the time of the happening of any such event prior to December 24, 1952, the dependent in his own right at that time would have been entitled to the status of a nonimmigrant of the class described in section 3 (6) of the Immigration Act of 1924 were he applying for admission to the United States in such status in possession of appropriate documents. Any such dependent who is entitled to a nonimmigrant status in his own right may be permitted to remain in the United States subject to the provisions of the Immigration and Nationality Act and this part. If a dependent spouse establishes such eligibility, the child of such spouse may also be permitted to remain in the United States subject to the applicable provisions of the Immigration and Nationality Act and this part. The fact that a dependent child establishes such eligibility shall not authorize the parent of such child to remain in the United States.

- (c) Failure to submit a maintenance of status report in accordance with § 214e.6.

§ 214e.6 Trader and dependents admitted under Immigration Act of 1924. A trader or dependent admitted to the United States under the Immigration Act of 1924 without limitation of time shall make a report annually on the anniversary date of his original admission to the United States on Form I-126 to the district director having administrative jurisdiction over the place where the alien resides in the United States indicating whether he continues to be eligible for re-admission to the country whence he came or for admission to some other country, and has fulfilled and will continue to fulfill all the conditions prescribed by § 214e.2 of this chapter. No appeal shall lie from such officer's decision that the alien is not maintaining his status.

IMMIGRATION AND NATIONALITY ACT

Page 327

PART 214f—ADMISSION OF NONIMMIGRANTS: STUDENTS

Sec.

- 214f.1 Petition for approval.
- 214f.2 Approval of certain institutions of learning and recognized places of study.
- 214f.3 Withdrawal of approval.
- 214f.4 Certificate of eligibility.
- 214f.5 Prerequisites for admission.
- 214f.6 Limitation on time for which admitted.
- 214f.7 Employment.
- 214f.31 Withdrawal of approval; procedure.

§ 214f.1 *Petition for approval.* Any institution of learning or other recognized place of study desiring the approval required by section 101 (a) (15) (F) of the act shall file with the district director having administrative jurisdiction over the place in which the institution or place of study is located a petition for such approval on Form I-17. The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter. After consideration of the facts presented, the district director shall notify the institution or place of study in writing of his decision and if said decision is to withdraw the approval previously granted the reasons therefor and of its right to appeal in accordance with the provisions of Part 103 of this chapter. (page 291)

§ 214f.2 *Approval of certain institutions of learning and recognized places of study.* Any institution of learning or other place of study in the United States which falls within any of the following described categories, and which agrees to report in writing to the district director having administrative jurisdiction over the place where such institution of learning or place of study is located the enrollment and termination of attendance of each nonimmigrant student, is hereby approved for the attendance of nonimmigrant students in accordance with section 101 (a) (15) (F) of the act:

(a) Any public educational institution listed in the current issue of one of the following-described publications or lists:

(1) "Directory of Secondary Day Schools in the United States," U. S. Office of Education, Washington, D. C.

(2) Directories and official lists of public educational institutions issued by State departments of education. In a State that does not publish all-inclusive public school directories or official lists, a statement over the signature of the local public school superintendent that any school is an approved or recognized part of that public school system, will suffice within the meaning of this subparagraph.

SUPPLEMENT

(3) Education Directors, Part 3, "Higher Education," U. S. Office of Education (including privately controlled colleges and universities listed therein).

(4) "Accredited Higher Institutions," U. S. Office of Education (including privately controlled colleges and universities listed therein).

(b) Any secondary school which is operated by or as a part of an institution of higher learning listed in paragraph (a) (2), (3), or (4) of this section.

(c) Private and parochial elementary and secondary schools, if they meet any one of the following conditions:

(1) The school is currently listed as accredited in the U. S. Office of Education publication "Directory of Secondary Day Schools in the United States."

(2) The school is currently listed in the educational directory of the respective State department of education.

(3) The school is an elementary school related to an accredited secondary school.

(4) The school is certified by a responsible official of a State or local public education department or system as meeting the requirements of the State or local public educational system.

The agreement to report the initial registration and termination of attendance of each nonimmigrant student shall be executed on Form I-17, and the report made pursuant to such agreement may be prepared on Form I-21. The provisions of § 2.5 of this chapter relating to payment of a fee shall not be applicable to an institution of learning or other place of study which meets the requirements of this section.

§ 214f.3 Withdrawal of approval. Approval granted under section 101 (a) (15) (F) of the Immigration and Nationality Act or section 4 (e) of the Immigration Act of 1924 to an institution of learning or place of study which materially reduces its educational program or facilities, or which fails, neglects, or refuses to comply with all the terms of its agreement and section 101 (a) (15) (F) of the act may be revoked by the district director having administrative jurisdiction over the place in which such institution or place of study is located.

§ 214f.4 Certificate of eligibility. When a prospective nonimmigrant student has been found eligible for attendance, the appropriate officer of the approved institution of learning or place of study shall execute Form I-20 and furnish it to the student for presentation to the American consul (if a visa is required) and the Service. If

IMMIGRATION AND NATIONALITY ACT

requested by the student, the school shall execute a new Form I-20 in a single copy for the student's use in temporarily departing from and reentering the United States, in connection with any application for extension of the period of his temporary admission, or in connection with any request to transfer to another school. Form I-20 presented by a student returning from a temporary absence may be retained by the student and used in connection with reentries any number of times within six months from date of issuance.

§ 214f.5 *Prerequisites for admission.* An alien, otherwise admissible to the United States as a nonimmigrant of the class described in section 101 (a) (15) (F) of the act, shall not be eligible for admission to the United States in such nonimmigrant classification unless he presents Form I-20 properly filled out by the institution to which he is destined, and personally executes the reverse of Form I-20.

§ 214f.6 *Limitation on time for which admitted.* An alien may be admitted initially to the United States as a nonimmigrant of the class described in section 101 (a) (15) (F) of the act for a period not to exceed one year.

§ 214f.7 *Employment.* If it becomes necessary for a student to accept employment after admission, he shall, before accepting such employment, apply on Form I-24 to the district director having administrative jurisdiction over the place in which is located the approved institution or place of study attended by him. If the district director is satisfied that the applicant is meeting all the conditions and requirements of his status, that he does not have sufficient means to cover his expenses, and that the desired employment will not interfere with his carrying successfully a course of study of the required scope, he may grant permission to accept employment. An application for practical training, which may be authorized within the limitations specified on Form I-20, shall be made on Form I-24 and shall be endorsed by the institution of learning or place of study which requires or recommends such practical training.

§ 214f.31 *Withdrawal of approval; procedure.* Whenever a district director having administrative jurisdiction over the place in which an approved institution of learning or place of study is located has reason to believe that such institution or place of study has materially reduced its educational program or facilities, or has failed, neglected, or refused to comply with all the terms of its agreement and section 101 (a) (15) (F) of the act, he shall cause a notice to be sent to such institution or place of study that it is proposed within 30 days of the delivery of the notice to enter a decision withdrawing the

SUPPLEMENT

approval previously granted for reasons set forth in the notice. Within such 30-day period the institution or place of study may submit to the district director written representations, under oath and supported by documentary evidence, setting forth reasons why the approval should not be withdrawn. The period within which such representations may be submitted may be extended in the discretion of the district director upon timely request for such extension. After consideration of the facts presented, the district director shall notify the institution or place of study in writing of his decision and, if said decision is to withdraw the approval previously granted, the reasons therefor and that the institution or place of study has 10 days from receipt of notification of decision in which to appeal in accordance with Part 7 of this chapter.

Page 330

PART 214g—ADMISSION OF NONIMMIGRANTS: FOREIGN GOVERNMENT REPRESENTATIVES TO INTERNATIONAL ORGANIZATIONS

Sec.

- 214g.1 Acceptance of classification.
- 214g.2 Limitation as to time for which alien may be admitted.
- 214g.4 Failure to maintain status.

§ 214g.1 Acceptance of classification. Whenever an alien who applies for admission to the United States as a nonimmigrant of one of the classes described in section 101 (a) (15) (G) of the Immigration and Nationality Act presents to the examining immigration officer at a port of entry to the United States a valid unexpired nonimmigrant visa duly issued to him by a consular officer under such classification, the immigration officer shall accept the consular officer's classification of the alien and admit the alien, if he is otherwise admissible to the United States, unless specifically directed to the contrary by the regional commissioner after consultation with the Department of State, in which event the examining officer shall take further action as provided in section 235 of the Immigration and Nationality Act. For the purposes of this part, the term "immediate family" as used in section 101 (a) (15) (G) of the Immigration and Nationality Act means aliens who are closely related to the principal alien by blood, marriage, or adoption and who reside regularly in the household of the principal alien.

§ 214g.2 Limitation as to time for which alien may be admitted. The period of alien's admission to the United States as a nonimmigrant of the class described in section 101 (a) (15) (G) (i), (ii),

IMMIGRATION AND NATIONALITY ACT

(iii), or (iv) of the Immigration and Nationality Act shall not exceed such time as the Secretary of State continues to recognize him as a member of such class. An alien of the class described in clause (v) of section 101 (a) (15) (G) of the Immigration and Nationality Act shall not be admitted initially to the United States for more than one year.

§ 214g.4 Failure to maintain status. At such time as any representative, officer, or employee described in clauses (i) to (iv) inclusive of section 101 (a) (15) (G) of the Immigration and Nationality Act, or any representative, officer, or employee of an international organization as described in section 3 (7) of the Immigration Act of 1924, as amended, is ineligible under the Immigration and Nationality Act and this chapter to remain in the United States in the status of such representative, officer or employee, any alien member of the immediate family of such representative, officer, or employee, any attendant, servant or personal employee of any such representative, officer or employee, and any member of the immediate family of such attendant, servant, or personal employee who has nonimmigrant status pursuant to section 101 (a) (15) (G) of the Immigration and Nationality Act or section 3 (7) of the Immigration Act of 1924, as amended, shall be regarded as having failed to maintain such status. This section shall not be construed as setting forth the sole ground on which the persons herein described may be regarded as having failed to maintain such status.

Page 332

PART 214h—ADMISSION OF NONIMMIGRANTS: TEMPORARY SERVICES, LABOR, OR TRAINING

Sec.

- 214h.1 Limitation as to time for which alien may be admitted.
- 214h.2 Bond.
- 214h.3 Special prerequisites for admission.
- 214h.4 Petition.
- 214h.6 Limitation.

§ 214h.1 Limitation as to time for which alien may be admitted. An alien of the classes described in section 101 (a) (15) (H) of the Immigration and Nationality Act shall be admitted to the United States for such period, not to exceed one year, as may be authorized by the district director or the regional commissioner in granting a petition to import such alien.

SUPPLEMENT

§ 214h.2 *Bond.* Nonimmigrants of the classes described in section 101 (a) (15) (H) of the act who are required to furnish bonds under § 214.3 or § 214.4 of this chapter shall do so on Form I-377, and shall be in an amount specified by the district director or the regional commissioner.

§ 214h.3 *Special prerequisites for admission.* An alien of any of the classes described in section 101 (a) (15) (H) of the Immigration and Nationality Act shall not be admitted to the United States unless he establishes to the satisfaction of the admitting officer that he is destined in good faith to a petitioner whose petition for such alien's importation has been filed and approved in accordance with the provisions of section 214 (c) of the Immigration and Nationality Act and this part, and that he is entering the United States in good faith to perform the services, labor, or training specified in the petition.

§ 214h.4 *Petition.* The petition required by section 214 (c) of the act shall be filed on Form I-129B. Form I-129B may include several prospective nonimmigrants provided they are proceeding from the same place of origin and destined to the United States to perform the same type of services. The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter (page 291).

§ 214h.6 *Limitation.* The provisions of this part shall not be applicable to a nonimmigrant agricultural worker applying for admission, or admitted, to the United States in accordance with the provisions of Title V of the Agricultural Act of 1949, as amended. The case of such alien shall be governed by the provisions of Part 214k of this chapter.

Page 334

PART 214i—ADMISSION OF NONIMMIGRANTS: REPRESENTATIVES OF INFORMATION MEDIA

Sec.

- 214i.1 Limitation as to time for which alien may be admitted.
- 214i.3 Special conditions of admission.
- 214i.4 Failure to maintain status.

§ 214i.1 *Limitation as to time for which alien may be admitted.* An alien admitted to the United States as a nonimmigrant of the class described in section 101 (a) (15) (I) of the Immigration and

IMMIGRATION AND NATIONALITY ACT

Nationality Act shall be admitted initially for a period fixed by the admitting officer not to exceed one year.

§ 214i.3 *Special conditions of admission.* A nonimmigrant of the class described in section 101 (a) (15) (I) of the Immigration and Nationality Act shall be admitted to the United States on condition that (a) he will not change the information medium or his employer by which he is accredited unless and until he obtains consent to do so from the district director having administrative jurisdiction over the district in which the alien resides in the United States, and (b) he will depart from the United States at such time as the Secretary of State determines that the reciprocity required by section 101 (a) (15) (I) of the Immigration and Nationality Act has ceased to exist. For the purposes of section 101 (a) (15) (I) and this part, reciprocity shall be deemed to exist when the alien is accredited by a foreign information medium having its home office in a foreign country, the government of which grants similar privileges to representatives of such information medium with home offices in the United States, except that when the information medium is owned, operated, subsidized, or controlled by a foreign government, directly or indirectly, the reciprocity required shall be accorded by such foreign government.

§ 214i.4 *Failure to maintain status.* At such time as an alien of the class described in section 101 (a) (15) (I) of the Immigration and Nationality Act is ineligible under the Act and this chapter to remain in the United States in such status, the members of such alien's family having nonimmigrant status as such under section 101 (a) (15) (I) of the Immigration and Nationality Act shall be regarded as having failed to maintain such status. This section shall not be construed as setting forth the sole ground on which the persons herein described may be regarded as having failed to maintain status.

Page 335

PART 214j—ADMISSION OF NONIMMIGRANTS: EXCHANGE ALIENS

Sec.

- 214j.1 Definition.
- 214j.2 Limitation as to time for which alien may be admitted.
- 214j.3 Bonds.
- 214j.4 Special condition of admission.
- 214j.5 Employment.

§ 214j.1 *Definition.* As used in this part the term "exchange alien" means (a) an alien admitted to the United States prior to

SUPPLEMENT

December 24, 1952, pursuant to section 201 of the United States Information and Educational Exchange Act of 1948 as a nonimmigrant under section 3 (2) of the Immigration Act of 1924 or, (b) an alien admitted or seeking admission to the United States pursuant to section 201 of the United States Information and Educational Exchange Act of 1948, as amended, as a nonimmigrant under section 101 (a) (15) of the Immigration and Nationality Act.

§ 214j.2 Limitation as to time for which alien may be admitted. An alien applying for admission to the United States as a nonimmigrant under section 201 of the United States Information and Educational Exchange Act of 1948, as amended, whose visa by its own terms indicates that it was issued under that Act, and who is otherwise admissible to the United States, may be admitted for the period specified in the Form DSP-66 presented by him at the port of entry, not to exceed one year.

§ 214j.3 Bonds. Exchange aliens shall not be required to furnish bond under § 214.3 or § 214.4 of this chapter.

§ 214j.4 Special condition of admission. A nonimmigrant of the class described in this part shall be admitted on the condition that he agrees not to apply for a change of the nonimmigrant status under which he is admitted to any other class or classes of nonimmigrant pursuant to section 248 of the act, or adjustment of status to that of a permanent resident pursuant to section 245 of the act: *Provided*, That said agreement shall cease to be binding upon any such nonimmigrant who, subsequent to admission, is granted a waiver in accordance with the provisions of section 201 (b) of the United States Information and Educational Exchange Act, as amended.

§ 214j.5 Employment. An exchange alien may accept remunerative employment in the United States only if it is consistent with the purpose of the United States Information and Educational Exchange Act of 1948, as amended.

IMMIGRATION AND NATIONALITY ACT

Page 340

PART 223—REENTRY PERMITS

Sec.

- 223.1 Application.
- 223.2 Reentry permit.
- 223.3 Extensions.
- 223.4 Registrants under military training.
- 223.5 Expired permits.

§ 223.1 *Application.* An application for a reentry permit under the provisions of section 223 of the act shall be submitted on Form I-131. The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor and of his right to appeal in accordance with the provision of Part 103 of this chapter (page 291).

§ 223.2 *Reentry permit—(a) Form.* Reentry permits shall be issued on Form I-132 and shall indicate whether they are issued under paragraph (a) (1) or (a) (2) of section 223 of the act and the period of their validity.

(b) *Limited reentry permit.* Limited reentry permits, valid for reentry to Hawaii only, may be issued to those citizens of the Philippine Islands specified in § 101.1 (f) of this chapter, if otherwise eligible.

§ 223.3 *Extensions.* An application for extension of a reentry permit shall be submitted to the office having jurisdiction over the applicant's place of residence in the United States prior to the expiration of the period of validity of the reentry permit. The application shall be in writing and shall state the applicant's name and address in the United States; when, where, and the manner in which he departed from the United States; the port of landing and the date of his arrival abroad; the countries visited by him in the order visited; his reasons for requesting an extension and the period for which the extension is desired, and the address to which the permit is to be returned. If the extension application is granted, the permit will be noted to show the extension and returned to the applicant; if denied, the applicant shall be notified of the decision, and the permit returned to him if the remaining period of its validity permits its use for return to the United States. No appeal shall lie from a decision denying an application for extension of a reentry permit.

§ 223.4 *Registrants under Universal Military Training and Service Act.* A reentry permit or extension thereof shall not be issued

SUPPLEMENT

or granted to any alien who is legally subject to registration for service in the armed forces of the United States unless the applicant shall present a permit from his local Selective Service Board to depart from the United States. A reentry permit issued to such an alien may be made valid for a period which will coincide with the period of absence authorized by the local board, except that in no instance shall the period exceed one year.

§ 223.5 *Expired permits.* Upon the expiration of the period of validity of a reentry permit, the permit shall be surrendered by the holder to the issuing office. If any such expired permit has not been surrendered to the Service, no subsequent reentry permit shall be issued to the same alien unless he shall first surrender the expired permit, or satisfactorily account for his failure so to do.

Paragraph (c) of § 223.11, *Application*, is amended to read as follows:

(c) *Action on application.* If the district director is satisfied (1) that the applicant meets the eligibility requirements contained in section 223 of the Immigration and Nationality Act, (2) that the application is made in good faith, and (3) that the alien's proposed departure from the United States would not be contrary to the interests of the United States, he shall grant the application and issue the permit, which shall be valid for the time thereon specified, not to exceed one year. If deemed necessary, investigations may be conducted by interview or by correspondence. If the district director is not satisfied that the application should be granted he shall deny it. The applicant shall be notified in writing of the decision with the reasons therefor, unless the disclosure of the reasons would, in the opinion of the district director, be prejudicial to the public interest, safety or security, in which event the reasons shall not be stated. At that time, the applicant shall be advised that he has 10 days from the date of receipt of notification of the decision in which he may appeal to the Assistant Commissioner, Inspections and Examinations Division. If on such appeal the application is granted, the Assistant Commissioner shall notify the district director and the permit shall be issued by that officer. The mailing of the permit to the applicant shall constitute notice to him of the favorable decision made in the case either initially or on appeal. If the application is denied and no appeal is taken, or is denied on appeal, the fee shall be returned to the applicant.

IMMIGRATION AND NATIONALITY ACT

Paragraphs (c) and (d) of § 223.12, *Reentry permit*, are amended to read as follows:

(c) *Delivery.* The reentry permit shall be mailed to the applicant at the address shown on application Form I-131 unless the applicant requests that it be mailed to another address in the United States.

(d) *Emergent cases.* If the applicant satisfactorily establishes that a bona-fide emergency exists requiring his departure from the United States before a permit can be issued and delivered, the permit, if issued, may be forwarded to a consular officer abroad for delivery to the applicant. The applicant shall be informed that the acceptance of his application does not assure the issuance of the permit.

Page 343

PART 231—ARRIVAL-DEPARTURE MANIFESTS AND LISTS; SUPPORTING DOCUMENTS

Sec.

231.1 Arrival manifests, lists, and arrival-departure cards.

231.2 Departure lists and arrival-departure cards.

§231.6 Ports of Entry for aliens arriving by vessel or by land transportation.

§ 231.1 *Arrival manifests, lists, and arrival-departure cards*—(a) *Presentation.* The master or agent of every vessel arriving in the United States shall present to the immigration officer at the port of first arrival, typed or legibly printed in accordance with instructions on the reverse thereof, a manifest on Form I-418 of all passengers on board. To facilitate inspection on the manifest on Form I-418 may be presented in separate alphabetical listings for United States citizens and for aliens and may be further subdivided according to the separate foreign ports of embarkation and United States ports of debarkation. The master or agent of every aircraft arriving in the United States shall present to the immigration officer at the port of first arrival a manifest consisting of an arrival-departure card (Form I-94) for each passenger on board. Neither a Form I-418 nor a Form I-94 shall be required of a vessel or aircraft arriving in the continental United States or Alaska directly from Canada on a voyage or flight originating in that country. In lieu of Form I-418 or Form I-94, the master or agent of a vessel or aircraft arriving in the United States without touching at a foreign port on a voyage or flight originating in Hawaii, Guam, Puerto Rico, or the Virgin Islands of the United States, shall submit a list containing the surname, given name, and middle initial of each passenger on board. To facilitate inspection,

SUPPLEMENT

an advance list of the names of all passengers on board may be delivered to the immigration officer at the first port of arrival prior to the vessel's or aircraft's arrival. When such advance list has been submitted, there shall be delivered to the immigration officer at the time of arrival at the first port a list containing any changes or corrections which differ from the advance list. If the inspection of all passengers at the first port of arrival is impracticable, the inspection of passengers destined to subsequent ports of arrival may be deferred in the discretion of the examining immigration officer. The manifests or lists of those passengers not inspected shall be returned to the master for presentation at subsequent ports of arrival. The procedure followed at the first port of arrival shall be followed at any subsequent port of arrival. For the purpose of this section any coming to a United States port, from an outlying possession of the United States, from Hawaii, Guam, Puerto Rico, or the Virgin Islands of the United States shall be regarded as an arrival.

(b) *Additional documents.* When a manifest on Form I-418 is required to be presented, the master or agent of the vessel shall prepare as a part thereof a completely executed set of Forms I-94 for each alien passenger, except (1) an immigrant or (2) a Canadian citizen or a British subject who has his residence in Canada or Bermuda. The set of Forms I-94 shall be delivered to each alien for presentation to the examining immigration officer at the port of entry. When a manifest is not required or a nonimmigrant alien is applying other than as a passenger or crewman on board a vessel or aircraft, a set of Forms I-94 shall be prepared by the examining immigration officer for each nonimmigrant.

§ 231.2 *Departure lists and arrival-departure cards*—(a) *Presentation.* The master or agent of every vessel departing from the United States shall present to the immigration officer at the port from which the vessel will proceed directly to a foreign port or place a list of all passengers on board on Form I-418 in accordance with instructions contained thereon. The master or agent of every aircraft departing from the United States shall present to the immigration officer at the port from which the aircraft will proceed directly to a foreign port or place a fully executed Form I-94 (including departure information on the reverse) for each passenger departing. When available the Form I-94 given an alien at the time of his last arrival in the United States shall be utilized. Such departure lists and cards

IMMIGRATION AND NATIONALITY ACT

all be presented prior to the departure of the vessel or aircraft except that vessels or aircraft making regular trips to and from the United States in accordance with a published schedule may defer the presentation of such forms and attachments for a period not in excess of 30 days. Forms I-418 or arrival-departure cards shall not be required for vessels or aircraft departing the continental United States or Alaska directly to Canada on a voyage or flight terminating in that country.

(b) *Additional documents.* When a manifest on Form I-418 is presented, the master or agent shall attach to such manifest a fully executed Form I-94 (including departure information on the reverse) for each manifested alien passenger aboard except (1) an alien permanent resident of the United States or (2) a Canadian citizen or a British subject who has his residence in Canada or Bermuda. When available, the Form I-94 given the alien at the time of his last arrival in the United States shall be utilized. Any alien registration receipt card on Form I-151 surrendered pursuant to § 264.1 (d) of this chapter by an alien lawfully admitted for permanent residence who is permanently departing shall also be attached to Form I-418 or the preceding arrival-departure card (Form I-94). The alien shall surrender his Form I-94 to a Canadian immigration officer or United States immigration officer when it is not required to be presented by the master or agent of the vessel or aircraft.

Section 231.6 is amended by designating the present material as paragraph (b) and by adding a paragraph (a) reading as follows:

§ 231.6 *Ports of entry for aliens arriving by vessel or by land transportation.* (a) Ports of entry for aliens arriving by vessel or land transportation shall be those ports designated as such by the Commissioner. The designation of such a port of entry may be withdrawn whenever, in the judgment of the Commissioner, such action is warranted.

* * * * *

Paragraph (b) of § 231.6 is amended by deleting from the list of Class A of District No. 12—Seattle, Wash., the words “Loring, Mont.” and inserting in lieu thereof the words, “Morgan, Mont.”

Effective as of September 2, 1953, paragraph (b) of § 231.6, *Ports of entry for aliens arriving by vessel or by land transportation*, is amended by deleting “Zapata, Tex.” from the list of Class A ports of entry under District No. 14—San Antonio, Tex.

SUPPLEMENT

Paragraph (b) of § 231.6 *Ports of entry for aliens arriving by vessel or by land transportation* is amended in the following respects:

1. The list of Class C ports of entry under District No. 6—Miami, Fla., is amended by adding “Pascagoula, Miss.”
2. Effective as of September 1, 1953, the list of Class A ports of entry under District No. 14—San Antonio, Tex., is amended by inserting “Progreso, Tex.” between “Port Arthur, Tex.” and “Rio Grande City, Tex.” and deleting “Thayer, Tex.”
3. The list of Class B ports of entry under District No. 14—San Antonio, Tex., is amended by deleting “Delores, Tex.”
4. The list of Class B ports of entry under District No. 17—Honolulu, T. H., is deleted and the list of Class C ports of entry is amended by inserting “Hilo, T. H.” before “Kahului, T. H.”

(b) Subject to the limitations prescribed in this section, the following places are hereby designated as ports of entry for aliens arriving by any means of travel other than aircraft. Such ports are listed according to location by districts. The designations of such ports are divided into three classes—Class A, Class B, and Class C. Class A means that the port is a designated port of entry for all aliens. Class B means that the port is a designated port of entry only for aliens who at the time of applying for admission are lawfully in possession of valid and unexpired resident aliens' border crossing identification cards or valid nonresident aliens' border crossing cards, or are admissible without documents under the waiver of documents contained in this chapter. Class C means that the port is a designated port of entry only for aliens who are arriving in the United States as crewmen as that term is defined in section 101 (a) (10) of the Immigration and Nationality Act with respect to vessels.

Paragraph (a) of § 231.7 *Ports of entry for aliens arriving by aircraft* is amended by deleting “Swanton, Vt., Warren R. Austin Airport” from the list of ports of entry for aliens arriving by aircraft.

The second and third sentences of paragraph (f) *Listing documents of § 231.21 Arrival manifests and lists for vessels; general directions for preparation* are amended to read as follows: “If the alien is to pass through the United States under the provisions of section 238 (d) of the act, the notation ‘WOV—419,’ or in the case of an alien for whom a Form I-419 is not required, the notation ‘WOV’ shall be made in column (2). In the case of each alien passenger who does not have a Form 256, 257, I-100a, I-132, or, when required, Form

IMMIGRATION AND NATIONALITY ACT

I-419, the persons responsible for the delivery of the manifest shall, except in the case of a passenger whose case falls within the provisions of § 221.3 (b) (1) of this chapter, prepare as a part thereof a set of immigration Forms I-94 and deliver them to such passenger for surrender by him to the United States immigration officer at the port where the passenger is to be examined for admission to the United States.

The first sentence of subparagraph (2) of paragraph (a) *General directions for preparation of § 231.41 Arrival manifests for aircraft* is amended to read as follows: "In the case of each alien passenger who does not have a Foreign Service Form 256 or 257 or an immigration Form I-100a, I-132, or when required, I-419, the persons responsible for the delivery of the manifest shall, except in the case of a passenger whose case falls within the provisions of § 221.3 (b) (1) of this chapter, prepare as a part thereof a set of immigration Forms I-94 and deliver them to such passenger for surrender by him to the United States immigration officer at the port where the passenger is to be examined for admission to the United States."

The second sentence of paragraph (b) of § 231.22 *Arrival manifests and lists for vessels; delivery* is amended to read as follows: "The passengers listed thereon shall be inspected as to their eligibility to visit ashore for the time the vessel remains in port."

The first sentence of paragraph (c) of § 231.22 *Arrival manifests and lists for vessels; delivery* is amended to read as follows: "Both copies of such manifests shall indicate which through passengers are eligible to visit ashore for the time the vessel remains in port and which are not eligible."

Page 349

1. The list of Class A ports of entry in District No. 8—Detroit, Mich., is amended by adding the following ports of entry in alphabetical sequence:

Ecorse, Mich. (May 15-Oct. 15).

Gibraltar, Mich. (May 15-Oct. 15).

Keans Detroit Yacht Harbor, Detroit, Mich. (May 15-Oct. 15).

St. Clair Shores, Mich (May 15-Oct. 15).

2. The list of Class B ports of entry in District No. 10—St. Paul, Minn., is amended by deleting "Gunflint Lake, Minn."

SUPPLEMENT

3. The list of Class B ports of entry in District No. 15—El Paso, Tex., is amended by adding the following port of entry in alphabetical sequence:

San Vicente, Tex.

3. District No. 8—Detroit, Mich., of subparagraph (3) *Ports of entry for aliens arriving by aircraft* of paragraph (c) *Suboffices* of section 1.51 *Field Service* is amended by deleting “Detroit, Mich., Detroit-Wayne Major Airport” and substituting in lieu thereof “Detroit, Mich., Detroit Metropolitan Wayne County Airport.”

2. District No. 32—Anchorage, Alaska, of subparagraph (2) *Ports of entry for aliens arriving by vessel or by land transportation* of paragraph (c) *Suboffices* of section 1.51 *Field Service* is amended by deleting the parenthetical expression following Juneau, Alaska, and substituting in lieu thereof “(the port of Juneau includes, among others, the port facilities at Pelican and Sitka, Alaska).”

4. The list of international airports under District No. 32—Anchorage, Alaska, of subparagraph (3) *Ports of entry for aliens arriving by aircraft* of paragraph (c) *Suboffices* of section 1.51 *Field Service* is amended by deleting the following:

Fort Yukon, Alaska, Fort Yukon Airfield.

Skagway, Alaska, Skagway Municipal Airport.

Page 363

PART 233—TEMPORARY REMOVAL FOR EXAMINATION UPON ARRIVAL

Sec.

- 233.1 Definitions.
- 233.2 Assumption of responsibility.
- 233.3 Expenses of removal; payment.
- 233.4 Burial expenses.
- 233.5 Liability for detention expenses.
- 233.6 Termination of Government liability for detention expenses.
- 233.7 Place of detention.
- 233.31 Collection of removal expenses.
- 233.51 Collection of detention expenses.
- 233.52 Reimbursement of transportation line for detention expenses in certain cases.

§ 233.1 *Definitions.* For the purposes of this part the term “transportation line” means a vessel, aircraft, transportation line, transportation company, steamship company, or the master, commanding officer, authorized agent, owner, charterer, or consignee of a vessel or aircraft, and the term “alien” means any alien as defined by the

IMMIGRATION AND NATIONALITY ACT

Immigration and Nationality Act and any person applying for admission to the United States as a citizen or national of the United States.

§ 233.2 *Assumption of responsibility.* (a) Whenever a transportation line, in accordance with the provisions of section 233 (a) of the Immigration and Nationality Act and this part, desires to assume responsibility for the safekeeping of an alien during his removal to a designated place for examination and inspection, it shall submit a request therefor to the district director having administrative jurisdiction over the port of arrival. If the request is approved by the district director the transportation line shall execute an agreement on Form I-259A, and the district director shall cause a notice to detain and remove, on Form I-259, to be served upon the transportation line. Such notice shall specify the date and time the alien is to be removed, the place to which such removal shall be made, and the reason therefor. If such agreement is executed, the removal of the alien shall not be made by an immigration officer.

(b) A transportation line may enter into a blanket agreement assuming the responsibility for the safekeeping of all aliens brought to a port of the United States by such line who are required to be removed for examination and inspection. In the absence of a written notice to the contrary, the acceptance of service of Form I-259 naming the specific alien or aliens to be removed and the reasons therefor shall be good and sufficient evidence of the assumption by the said transportation line of its responsibility in accordance with the provisions of section 233 (a) of the Immigration and Nationality Act and this part.

§ 233.3 *Expenses of removal; payment.* Whenever an alien (including an alien crewman) is removed for examination and inspection by an immigration officer under section 233 (a) of the Immigration and Nationality Act and this part, the expenses of removal to be borne by the transportation line shall include payment for the salary of such officer for the time consumed in the removal, including travel time of the officer from and to the office at which he is stationed. The hourly rate of pay for such officer shall be based upon his gross annual salary. For the purposes of this section any fraction of an hour consumed in the removal of the alien shall be considered as a full hour. Any portion of such services which is performed after 5 p. m. or before 8 a. m., or on Sundays or holidays, shall be compensated for at the rate specified in the act of March 2, 1931, as amended by the

SUPPLEMENT

act of August 22, 1940 (8 U. S. C. 109a-109c). The expenses to be borne by the transportation line shall also include, but shall not be limited to the costs of transportation of the officer and alien, meals, cost of matrons, nurses, attendants, guards, ambulances, and similar costs for any accompanying alien whose protection or guardianship is required if the alien being removed for inspection and examination is helpless by reason of sickness or mental or physical disability or infancy.

§ 233.4 *Burial expenses.* For the purposes of section 233 of the Immigration and Nationality Act the burial expenses referred to therein shall include the payment of an amount not exceeding \$10.00 in any case for the services of a minister of any religious denomination.

§ 233.5 *Liability for detention expenses.* In any case in which an alien (including alien crewman) is removed from a vessel or aircraft and detained for examination and inspection under section 233 or 237 of the Immigration and Nationality Act and this part, the transportation line bringing such alien to the United States shall be responsible initially for the payment of detention expenses if the district director having administrative jurisdiction over the port of arrival has reason to believe from the facts presented that such detention expenses may properly be assessed against the transportation line. In any such case the transportation line, at the option of the district director, shall be required to obligate itself in a manner satisfactory to such officer for the payment of the expenses referred to in this section, and may be required to make payment in advance or deposit security, with respect to each alien so detained.

§ 233.6 *Termination of Government liability for detention expenses.* Any detention expenses and expenses incident thereto which are required to be borne by the Government under section 233 or 237 of the Immigration and Nationality Act shall continue to be borne by the Government until the alien is offered for deportation to the transportation line which brought him to the United States. Thereafter all detention expenses and expenses incident thereto shall be borne by such transportation line.

§ 233.7 *Place of detention.* Any alien who arrives in the United States by vessel or aircraft and who is ordered removed temporarily therefrom pending the final decision as to his admissibility shall be detained at such appropriate place as shall be designated for that

IMMIGRATION AND NATIONALITY ACT

purpose by the district director or officer in charge having administrative jurisdiction over the port of arrival.

§ 233.31 *Collection of removal expenses.* Bills pertaining to removal expenses of an alien removed pursuant to section 233 of the Immigration and Nationality Act and this part shall be presented monthly or oftener, at the option of the district director, to the responsible transportation line.

§ 233.51 *Collection of detention expenses.* In all cases in which the Government has initially paid the detention expenses and expenses incident thereto and the deportation expenses of a detained alien, pursuant to section 233 or 237 of the Immigration and Nationality Act, bills pertaining to the detention and deportation expenses shall be presented monthly or oftener, at the option of the district director, to the responsible transportation line as soon as liability therefor is established to the satisfaction of the district director. Such expenses shall include, but shall not be limited to, expenses of maintenance, medical treatment in hospital or elsewhere, burial in the event of death and transfer to the vessel or aircraft in the event of deportation. At ports where the Service maintains hospitals, the hospital expenses shall be such as are fixed by the Service, and at other hospitals they shall be such as are fixed by the authorities thereof.

§ 233.52 *Reimbursement of transportation line for detention expenses in certain cases.* A transportation line which has paid the detention expenses referred to in § 233.5 shall, upon presentation of itemized receipts be reimbursed from the applicable appropriation of the Service if it is finally determined that the transportation line should not be assessed for the payment of such expenses. The reimbursement shall cover only reasonable amounts actually expended for such expenses, but the reimbursement for the cost of maintenance shall not, except in unusual circumstances and unless the expense was incurred with the prior approval of the district director having administrative jurisdiction over the port, exceed the maximum per diem allowance prescribed in section 836 of Title 5 of the United States Code in lieu of subsistence. No reimbursement shall be made for detention expenses incurred after the alien has been offered for deportation to the transportation line which brought him to the United States.

SUPPLEMENT

Page 366

PART 235—INSPECTION OF ALIENS APPLYING FOR ADMISSION

Sec.

- 235.1 General qualifications.
- 235.2 Examination postponed.
- 235.3 Detention.
- 235.4 Notations on documents.
- 235.5 Pre-inspection in certain parts of the United States.
- 235.6 Notice of referral to special inquiry officer.
- 235.7 Referral of certain cases to district director.
- 235.8 Temporary exclusion.
- 235.12 Referral of certain cases to district director or officer in charge.

§ 235.1 *General qualifications.* The following general qualifications and requirements shall be met by an alien seeking to enter the United States regardless of whether he seeks to enter for permanent, indefinite, or temporary stay, and regardless of the purpose for which he seeks to enter: he shall apply in person at a place designated as a port of entry for aliens at a time when the immigration office at the port is open for inspection; he shall make his application in person to an immigration officer and shall present whatever documents are required; and he shall establish to the satisfaction of the immigration officer that he is not subject to exclusion under the immigration laws, Executive orders, or Presidential proclamations and is entitled under all of the applicable provisions of the immigration laws and this chapter to enter the United States. For the purpose of this Part, any coming to a United States port from a foreign port, from an outlying possession of the United States, from Hawaii, Guam, Puerto Rico or the Virgin Islands of the United States or from another port of the United States at which examination under this Part was not completed shall be regarded as an arrival. Any persons (including an alien crewman) passing through the Canal Zone on board a vessel which enters and clears at a Canal Zone port only to transit that Zone, to refuel, or to land passengers or crewmen for medical treatment, shall not be regarded as coming from a foreign port solely by reason of such passage.

§ 235.2 *Examination postponed.* Whenever an alien on arrival is found or believed to be suffering from a disability which renders it impractical to proceed with the examination under the act, the examination of such alien, members of his family concerning whose admissibility it is necessary to have such alien testify, and any accompanying aliens whose protection or guardianship will be required

IMMIGRATION AND NATIONALITY ACT

should such alien be found inadmissible shall be deferred for such time and under such conditions as the district director in whose district the port is located imposes.

§ 235.3 *Detention.* All persons arriving at a port in the United States by vessel or aircraft shall be detained aboard the vessel or at the airport of arrival by the master, commanding officer, purser, person in charge, agent, owner, or consignee of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service. Notice or order to so detain shall not be required.

§ 235.4 *Notations on documents.* The admitting examining officer shall by means of a stamp record in each passport required to be presented the word "Admitted" and the date and place of admission and shall record the same information on any immigrant visa, reentry permit, or Form I-94 presented by or prepared for an arriving admitted alien. One copy of the Form I-94, so endorsed, shall be returned to the admitted alien by whom it was presented or for whom it was prepared for his retention while in the United States and for surrender at the time of his departure from the United States, except that the copy of the I-94 shall be delivered to a representative of the carrier which brought him in the case of each alien who is authorized direct transit through the United States under section 238 (d) of the act.

§ 235.5 *Preexamination—(a) In United States territories and possessions.* In the case of any aircraft proceeding from Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands of the United States destined directly and without touching at a foreign port or place to any other of such places or to the continental United States, the examination required by the act of the passengers and crew may be made prior to the departure of the aircraft, and in such event, final determination of admissibility shall be made immediately prior to such departure. The examination shall be conducted in accordance with sections 234, 235, 236, and 237 of the act and this part and Parts 236 and 237 of this chapter, except that if it appears to the examining immigration officer that any person in the United States being examined under this section is *prima facie* deportable from the United States, further action with respect to his examination shall be deferred and further proceedings conducted as provided in section 242 of the act and Part 242 of this chapter. When the foregoing inspection procedure is applied to any aircraft, persons examined

SUPPLEMENT

and found admissible shall be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the aircraft. No other person shall be permitted to depart on such aircraft until and unless he is found to be admissible as provided in this section.

(b) *In contiguous territory and adjacent islands.* In the case of any aircraft or vessel proceeding directly from a port or place in foreign contiguous territory or adjacent islands to a port of entry in the continental United States, the examination and inspection of passengers and crew required by the act and final determination of admissibility may be made immediately prior to such departure at the port or place in foreign contiguous territory or adjacent island and shall have the same effect under the act as though made at the destined port of entry in the United States.

(c) *In the United States*—(1) *Application.* Any alien except a citizen of Canada, Mexico, or islands adjacent to the United States, or an alien who last entered the United States as a landed crewman shall apply for preexamination on Form I-63 if he intends to apply to a consular officer of the United States in Canada for an immigrant visa and he believes that he will be admissible to the United States under all the provisions of the immigration laws if in possession of an immigrant visa, or that he is *prima facie* eligible for a waiver of excludability under section 5 or 7 of the act of September 11, 1957; that he will be able to obtain the prompt issuance of an immigrant visa, and that he is a person of good moral character. Any alien who files Form I-63 shall be deemed to have thereby abandoned his non-immigrant status in the United States. Form I-63 shall be submitted to the office of the Immigration and Naturalization Service having jurisdiction over the applicant's place of residence, and may be filed separately or in conjunction with a petition for nonquota or preference quota status under Part 204 or 205 of this chapter. If the applicant is under deportation proceedings, the application shall be made to the special inquiry officer during the hearing pursuant to Part 242 of this chapter. The applicant shall be notified of the decision, and, if the application is denied, of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter (page 291).

(2) *Disposition.* When preexamination is authorized, the applicant shall not be preexamined until he has presented written assurance from the consular officer of the United States in Canada that a visa

IMMIGRATION AND NATIONALITY ACT

will be promptly available if upon personal examination he is found eligible for a visa, and a report from a medical officer of the United States Public Health Service setting forth findings of the applicant's mental and physical condition. Any applicant certified under paragraph (1), (2), (3), (4), or (5) of section 212 (a) of the act may appeal to a board of medical officers of the United States Public Health Service as provided in section 234 of the act and Part 236 of this chapter. Preexamination to determine the applicant's admissibility to the United States shall be conducted in the manner and under the procedures prescribed in sections 235 and 236 of the act and Parts 235 and 236 of this chapter. If the applicant is found admissible, he shall be given a sealed letter addressed to the Canadian immigration officer at the port through which he will enter Canada, showing the purpose of the applicant's visit to Canada and guaranteeing that if admitted to Canada he will be readmitted to the United States. An applicant previously found admissible in preexamination proceedings, who, having proceeded to Canada, is found inadmissible at the time of seeking reentry into the United States, shall be paroled into the United States.

§ 235.6 Notice of referral to special inquiry officer. If, in accordance with the provisions of section 235 (b) of the act, the examining immigration officer detains an alien for further inquiry before a special inquiry officer, he shall immediately sign and deliver to the alien a Notice To Alien Detained For Hearing By Special Inquiry Officer (Form I-122). If the alien is unable to read or understand the notice, it shall be read and explained to him by an employee of the Service, through an interpreter, if necessary, prior to such further inquiry.

§ 235.7 Referral of certain cases to district director. If the examining officer has reason to believe that the cause of an alien's excludability can readily be removed by posting of a bond in accordance with the provisions of section 213 of the act; by the exercise of section 212 (d) (3) or (4) of the act; or by the exercise of section 212 (c) of the act, he may in lieu of detaining the alien for hearing in accordance with section 235 (b) and section 236 of the act refer the alien's case to the district director within whose district the port is located for consideration of such action and defer further examination pending the decision of the district director. Refusal of a district director to authorize admission under section 213 or to grant application for the benefits of section 212 (d) (3) (4) or section 212

SUPPLEMENT

(c) of the act shall be without prejudice to the renewal of such application or the authorizing of such admission by the special inquiry officer without additional fee.

§ 235.8 *Temporary exclusion*—(a) *Report.* Any immigration officer who temporarily excludes an alien under the provisions of section 235 (c) of the act shall report such action promptly to the district director having administrative jurisdiction over the port at which such alien arrived. If the subject of the report is an alien who seeks to enter the United States other than under section 101 (a) (15) (D) of the act, the report shall be forwarded by the district director to the regional commissioner and further action shall be taken thereon as provided in paragraph (b) of this section.

(b) *Action by regional commissioner.* If the regional commissioner is satisfied that the alien is inadmissible to the United States under paragraphs (27), (28), or (29) of section 212 (a) of the act and if the regional commissioner, in the exercise of his discretion, concludes that such inadmissibility is based on information of a confidential nature the disclosure of which would be prejudicial to the public interest, safety, or security, he may deny any hearing or further hearing by a special inquiry officer and order such alien excluded and deported, or enter such other order in the case as he deems appropriate. In any other case the regional commissioner shall direct that the alien be given a hearing or further hearing before a special inquiry officer.

(c) *Finality of decision.* The decision of the regional commissioner provided for in paragraph (b) of this section shall be final and no appeal may be taken therefrom. The decision of the regional commissioner shall be in writing, signed by him and, unless it contains confidential matter, a copy shall be served on the alien. If the decision contains confidential matter, a separate order showing only the ultimate disposition of the case shall be signed by the regional commissioner and served on the alien.

(d) *Hearing by special inquiry officer.* If the regional commissioner directs that an alien temporarily excluded be given a hearing or further hearing before a special inquiry officer, such hearing and all further proceedings in the case shall be conducted in accordance with the provisions of section 236 and other applicable sections of the act to the same extent as though the alien had been referred to a special inquiry officer by the examining immigration officer; except, that if confidential information, not previously considered in the

IMMIGRATION AND NATIONALITY ACT

case, is adduced supporting the exclusion of the alien under paragraph (27), (28), or (29) of section 212 (a) of the act, the disclosure of which, in the discretion of the special inquiry officer, may be prejudicial to the public interest, safety, or security, the special inquiry officer may again temporarily exclude the alien under the authority of section 235 (c) of the act and further action shall be taken as provided in this section.

Section 235.12 *Referral of certain cases to district director or officer in charge* is amended by adding a sentence at the end thereof to read as follows: "The immigration officer conducting the preliminary examination at a port of entry of an alien applying for permanent admission to the United States who is liable to be excluded on grounds other than those set forth in paragraph (27), (28), or (29) of section 212 (a) of the act and who appears to be eligible to apply for the exercise of discretion under the provisions of section 212 (c) of that act and § 212.73 of this chapter, shall, if the alien applies for the exercise of such discretion, defer further examination and refer the application to the district director having jurisdiction over the place where the examination is being conducted."

Page 366

PART 235a—PREEXAMINATION OF ALIENS WITHIN THE UNITED STATES

Sec.

235a.1 Application.

235a.2 Disposition.

§ 235a.1 *Application.* Preexamination may be authorized for any alien, except a citizen of Canada, Mexico, or islands adjacent to the United States, who files an application for preexamination on Form I-63 prior to December 1, 1958, intending to apply to a consular officer of the United States in Canada for an immigrant visa and who believes that he will be admissible to the United States under all the provisions of the immigration laws if in possession of an immigrant visa, or that he is *prima facie* eligible for a waiver of excludability under section 5 or 7 of the act of September 11, 1957; that he will be able to obtain the prompt issuance of an immigrant visa, and that he is a person of good moral character. Any alien who files Form I-63 shall be deemed to have thereby abandoned his nonimmigrant status in the United States. Form I-63 shall be submitted to the office of the Immigration and Naturalization Service having jurisdiction over the applicant's place of residence, and may be filed separately or in conjunction with a petition for nonquota or preference quota status under Part 204 or 205 of this chapter. If the applicant is under

SUPPLEMENT

deportation proceedings, the application shall be made to the special inquiry officer during the hearing pursuant to Part 242 of this chapter. The applicant shall be notified of the decision, and, if the application is denied, of the reasons therefor and of his right to appeal under Part 3 or 103 of this chapter.

§ 235a.2 *Disposition.* When preexamination is authorized, the applicant shall not be preexamined until he has presented written assurance from the consular officer of the United States in Canada that a visa will be promptly available if upon personal examination he is found eligible for a visa, and a report from a medical officer of the United States Public Health Service setting forth findings of the applicant's mental and physical condition. Preexamination to determine the applicant's admissibility to the United States shall be conducted in the manner and under the procedures prescribed in sections 235 and 236 of the act and Parts 235 and 236 of this chapter. If the applicant is found admissible, he shall, not later than June 30, 1959, be given a sealed letter, addressed to the Canadian immigration officer at the port through which he will enter Canada, showing the purpose of his visit to Canada and guaranteeing that if admitted to Canada he will be readmitted to the United States or, if found inadmissible when seeking reentry to the United States he will be paroled into the United States.

The basis and purpose of the above-prescribed rules are to provide for an orderly termination of the extra-statutory preexamination privilege.

This order shall become effective on the date of its publication in the **FEDERAL REGISTER**. Compliance with the requirements of section 4 (c) of the **Administrative Procedure Act** relating to delayed effective date is unnecessary in this instance because persons affected by the foregoing rules may continue to file applications for preexamination through November 30, 1958.

Dated: October 24, 1958.

Page 371

PART 236—EXCLUSION OF ALIENS

Sec.

- 236.1 Authority of special inquiry officers.
- 236.2 Hearing.
- 236.3 Decision of the special inquiry officer; notice to the applicant.
- 236.4 Finality of order.
- 236.5 Appeals.
- 236.6 Fingerprinting of excluded aliens.

§ 236.1 *Authority of special inquiry officers.* In determining cases referred for further inquiry as provided in section 235 of the

IMMIGRATION AND NATIONALITY ACT

act, special inquiry officers shall have the powers and authority conferred upon them by the act and this chapter. Subject to any specific limitation prescribed by the act and this chapter, special inquiry officers shall also exercise the discretion and authority conferred upon the Attorney General by the act as is appropriate and necessary for the disposition of such cases.

§ 236.2 *Hearing*—(a) *Opening*. The special inquiry officer shall ascertain whether the applicant for admission is the person to whom Form I-122 was previously delivered by the examining immigration officer as provided in Part 235 of this chapter; enter a copy of such form in evidence as an exhibit in the case; inform the applicant of the nature and purpose of the hearing; advise him of the privilege of being represented by an attorney or other representative qualified under Part 292 of this chapter, and request him to state then and there whether he desires representation; advise him that he will have a reasonable opportunity to present evidence in his own behalf, to examine and object to evidence against him, and to cross-examine witnesses presented by the Government; and place the applicant under oath.

(b) *Procedure*. The special inquiry officer shall receive and aduce material and relevant evidence, rule upon objections, and otherwise regulate the course of the hearing.

(c) *Examining officer*. The district director in his discretion may assign an immigration officer to a proceeding under this part to perform the duties of an examining officer in behalf of the government. Such duties shall include, but are not limited to, the presentation of evidence and the interrogation, examination, and cross-examination of the applicant and other witnesses. Nothing contained herein shall be construed to diminish the authority conferred upon the special inquiry officer in conducting proceedings under this part.

(d) *Certification for mental condition; medical appeal*. An applicant certified under paragraphs (1), (2), (3), (4), or (5) of section 212 (a) of the act shall be advised that he has the right to appeal to a board of medical officers of the United States Public Health Service in accordance with the provisions of section 234 of the act. If the applicant elects to appeal to such medical board, the district director shall make the necessary arrangements for the convening of the medical board.

(e) *Record*. The hearing before the special inquiry officer, including the testimony and exhibits, the special inquiry officer's decision, and all written orders, motions, appeals, and other papers filed in the proceeding shall constitute the record in the case. The hearing

SUPPLEMENT

shall be recorded verbatim except for statements made off the record with the permission of the special inquiry officer.

§ 236.3 *Decision of the special inquiry officer; notice to the applicant*—(a) *Contents.* The decision of the special inquiry officer may be oral or written. It shall include a summary of the evidence adduced and shall set forth findings of fact and conclusions of law as to excludability. The decision shall be concluded with the order of the special inquiry officer.

(b) *Oral decision.* An oral decision shall be stated for the record by the special inquiry officer at the conclusion of the hearing and in the presence of the applicant. When entitled to appeal from an adverse decision of the special inquiry officer, the applicant shall be so advised and shall be required to state then and there whether he wishes to appeal. At his request, the applicant shall be furnished with a typewritten transcript of the oral decision of the special inquiry officer.

(c) *Written decision.* When the decision of the special inquiry officer is in writing, the district director shall serve a signed copy thereof on the applicant, together with the notice referred to in § 3.3 of this chapter.

§ 236.4 *Finality of order.* The order of the special inquiry officer shall be final except when a case has been certified as provided in Part 3 and Part 103 of this chapter, or when an appeal is taken to the Board of Immigration Appeals. When the order of the special inquiry officer is to admit the applicant, the special inquiry officer shall place him on notice that the decision is subject to appeal by the district director as provided in § 236.5 (c).

§ 236.5 *Appeals*—(a) *In general.* Pursuant to Part 6 of this chapter, an appeal shall lie to the Board of Immigration Appeals from a decision of the special inquiry officer under this part, except as limited by section 236 (d) of the act.

(b) *By applicant.* When the applicant states that he wishes to appeal from an oral decision of the special inquiry officer, he shall be required then and there to submit completed Form I-290A. At his request, he shall be allowed 10 days from the date of the oral decision in which to file a brief. An appeal from a written decision of the special inquiry officer shall be taken within 10 days after mailing.

(c) *By district director.* The district director may, within 5 days from date of decision, appeal from an order of the special inquiry officer to admit the applicant. The applicant shall be notified in writing when an appeal is taken by the district director and advised that he will be allowed 5 days from receipt of notification in which to

IMMIGRATION AND NATIONALITY ACT

submit written representations for transmittal to the Board with the record in the case.

§ 236.6 *Fingerprinting of excluded aliens.* Every alien 14 years of age or older who is excluded from admission to the United States by a special inquiry officer shall be fingerprinted, unless during the preceding year he has been fingerprinted at an American consular office.

Page 377

PART 238—ENTRY THROUGH OR FROM FOREIGN CONTIGUOUS TERRITORY AND ADJACENT ISLANDS

Sec.

- 238.1 Inspection outside the United States.
- 238.2 Contracts with transportation lines.
- 238.3 Contracts and bonding agreement for certain transit aliens.
- 238.11 Preexamination outside the United States.

§ 238.1 *Inspection outside the United States.* All inspections and medical examinations which may be conducted in foreign contiguous territory or adjacent islands under the provisions of section 238 of the Immigration and Nationality Act, shall be in all respects similar to those conducted at ports of entry in the United States, and officials of the United States making the inspections and examinations required under the immigration laws of the United States shall be provided with all necessary facilities.

§ 238.2 *Contracts.* The contracts with transportation lines referred to in sections 238 (a) and (b) of the act shall be made by the regional commissioner in behalf of the Government and shall be in such form as prescribed. The contracts with transportation lines referred to in section 238 (d) of the act shall be made by the Commissioner in behalf of the Government and shall be on Form I-426.

The basis and purpose of the above-prescribed regulations are to provide for final determination of admissibility prior to departure from foreign contiguous territory or adjacent islands.

§ 238.3 *Contracts and bonding agreement for certain transit aliens.* Transportation lines desiring to bring to the United States aliens in direct and continuous transit through the United States en route to foreign destinations in accordance with the provisions of section 238 (d) of the act shall apply to the Commissioner for the privilege of entering into a contract, including a bonding agreement. Such contract, if agreed to by the Commissioner, shall be on Form I-426.

§ 238.11 *Preexamination outside the United States—(a) Who may apply.* Subject to the limitations hereinafter provided, whenever

SUPPLEMENT

officers of the Service are stationed in foreign contiguous territory or adjacent islands, persons (whether citizens or nationals of the United States or aliens) who intend to apply for admission to the United States may appear before such officer to be preexamined as to their admissibility to the United States. Persons required by the Immigration and Nationality Act and this chapter to be in possession of a permit to enter or a passport shall not be preexamined unless such permit to enter or passport is presented.

(b) *Preparation of Form I-94.* A set of Forms I-94 shall be prepared by an immigration officer for an alien presenting himself for preexamination if such set would be required if the alien were applying at a port of entry for admission to the United States. If a full set of Forms I-94 would not be so required and if the applicant is an alien not in possession of a permit to enter, or if the applicant is a citizen or a national of the United States, the immigration officer shall prepare a set of Forms I-94 for the applicant. The names and ages of children under 14 years of age may be included in the Forms I-94 prepared for an accompanying parent or guardian.

(c) *Procedure when applicant is found to be admissible.* If the examining officer determines that the applicant being preexamined is admissible to the United States, he shall note that determination on the immigrant or nonimmigrant form prepared for or presented by the applicant, and return the form to the applicant for presentation and surrender at the actual port of entry in the United States. If the applicant applies for admission to the United States at a port of entry in the United States within 30 days from the finding of admissibility by the notation of the preexamining officer and there has been no subsequent change in the applicant's immigration status, the applicant may be admitted upon identification, provided he presents valid, unexpired documents as required by the Immigration and Nationality Act and this chapter in the case of a person applying for admission without having been preexamined. The port of entry into the United States shall be the "record" port of entry for all purposes. If notwithstanding the determination on preexamination, the examining immigration officer at the port of entry is not satisfied that the applicant is admissible, further action shall be taken as provided in sections 235, 236, and 237 of the Immigration and Nationality Act and Parts 235, 236, and 237 of this chapter to the same extent as though the alien had not been preexamined.

(d) *Procedure when applicant is not found to be admissible.* If the examining immigration officer is not satisfied that the applicant being preexamined is admissible to the United States, further action shall be taken as provided in sections 235, 236, and 237 of the Immi-

IMMIGRATION AND NATIONALITY ACT

gration and Nationality Act and Parts 235, 236, and 237 of this chapter to the same extent as though the applicant were applying for admission at a port of entry, except that if the applicant is found to be admissible by a special inquiry officer or on appeal, the provisions of paragraph (c) of this section shall govern the further disposition of the case.

Page 378

PART 239—SPECIAL PROVISIONS RELATING TO AIRCRAFT: DESIGNATION OF PORTS OF ENTRY FOR ALIENS ARRIVING BY CIVIL AIRCRAFT

Sec.

- 239.1 Definitions.
- 239.2 Landing requirements.
- 239.3 Aircraft; how considered.
- 239.4 International airports for entry of aliens.

§ 239.1 *Definitions.* As used in this part, the term "scheduled airline" means any individual, partnership, corporation, or association engaged in air transportation upon regular schedules to, over, or away from the United States, or from one place to another in the United States, and holding a Foreign Air Carrier Permit or a Certificate of Public Convenience and Necessity issued pursuant to the Civil Aeronautics Act of 1938.

§ 239.2 *Landing requirements*—(a) *Place of landing.* Aircraft carrying passengers or crew required to be inspected under the act shall land at the international airports enumerated in the Statement of Organization of the Service unless permission to land elsewhere shall first be obtained from the Commissioner of Customs in the case of aircraft operated by scheduled airlines, and in all other cases from the Collector of Customs or other Customs Officer having jurisdiction over the airport of entry nearest the intended place of landing. Whenever such permission is granted, the owner, operator, or person in charge of the aircraft shall pay any additional expenses incurred in inspecting passengers or crew on board such aircraft, except that when permission is granted to a scheduled airline to land an aircraft operating on a schedule no inspection charge shall be made for overtime service performed by immigration officers if the aircraft arrives substantially in accordance with schedules on file with the Service.

(b) *Advance notice of arrival.* Aircraft carrying passengers or crew required to be inspected under the Immigration and Nationality Act, except aircraft of a scheduled airline arriving in accordance with the regular schedule filed with the Service at the place of landing, shall furnish notice of the intended flight to the immigration officer

SUPPLEMENT

at or nearest the intended place of landing, or shall furnish similar notice to the Collector of Customs or other Customs officer in charge at such place. Such notice shall specify the type of aircraft, the registration marks thereon, the name of the aircraft commander, the place of last departure, the airport of entry, or other place at which landing has been authorized, number of alien passengers, number of citizen passengers, and the estimated time of arrival. The notice shall be sent in sufficient time to enable the officers designated to inspect the aircraft to reach the airport of entry or such other place of landing prior to the arrival of the aircraft.

(c) *Permission to discharge or depart.* Aircraft carrying passengers or crew required to be inspected under the Immigration and Nationality Act shall not discharge or permit to depart any passenger or crewman without permission from an immigration officer.

(d) *Emergency or forced landing.* Should any aircraft carrying passengers or crew required to be inspected under the Immigration and Nationality Act make a forced landing in the United States, the commanding officer or person in command shall not allow any passenger or crewman thereon to depart from the landing place without permission of an immigration officer, unless such departure is necessary for purposes of safety or the preservation of life or property. As soon as practicable, the commanding officer or person in command, or the owner of the aircraft, shall communicate with the nearest immigration officer and make a full report of the circumstances of the flight and of the emergency or forced landing.

§ 239.3 *Aircraft; how considered.* Except as otherwise specifically provided in the Immigration and Nationality Act and this chapter, aircraft arriving in or departing from the continental United States or Alaska directly from or to foreign contiguous territory or the French island of St. Pierre or Miquelon shall be regarded for the purposes of the Immigration and Nationality Act and this chapter as other transportation lines or companies arriving or departing over the land borders of the United States. Aliens on aircraft arriving overland in foreign contiguous territory on journeys which did not begin outside of North or South America or islands belonging to countries or to political subdivisions of these continents shall not be held to be subject to section 212 (a) (24) of the Immigration and Nationality Act.

§ 239.4 *International airports for entry of aliens.* International airports for the entry of aliens shall be those airports designated as such by the Commissioner. An application for designation of an airport as an international airport for the entry of aliens shall be made to the Commissioner and shall state whether the airport (a) has

IMMIGRATION AND NATIONALITY ACT

been approved by the Secretary of Commerce as a properly equipped airport, (b) has been designated by the Secretary of the Treasury as a port of entry for aircraft arriving in the United States from any place outside thereof and for the merchandise carried thereon, and (c) has been designated by the Secretary of Health, Education, and Welfare as a place for quarantine inspection. An airport shall not be so designated by the Commissioner without such prior approval and designation, and unless it appears to the satisfaction of the Commissioner that conditions render such designation necessary or advisable, and unless adequate facilities have been or will be provided at such airport without cost to the Federal Government for the proper inspection and disposition of aliens, including office space and such temporary detention quarters as may be found necessary. The designation of an airport as an international airport for the entry of aliens may be withdrawn whenever, in the judgment of the Commissioner, there appears just cause for such action.

Page 381

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

Sec.

- 242.1 Order to show cause and notice of hearing.
- 242.2 Apprehension, custody, and detention.
- 242.3 Aliens confined to institutions; incompetents, minors.
- 242.4 Fingerprints and photographs.
- 242.5 Voluntary departure prior to commencement of hearing.
- 242.6 Aliens deportable under section 242 (f) of the act.
- 242.7 Cancellation of proceedings.
- 242.8 Special inquiry officers.
- 242.9 Examining officers.
- 242.10 Representation by counsel.
- 242.11 Incompetent respondents.
- 242.12 Interpreter.
- 242.13 Postponement and adjournment of hearing.
- 242.14 Evidence.
- 242.15 Contents of record.
- 242.16 Hearing.
- 242.17 Decision of special inquiry officer.
- 242.18 Order of special inquiry officer.
- 242.19 Notice of decision.
- 242.20 Finality of order.
- 242.21 Appeals.
- 242.22 Proceedings under section 242 (f) of the act.
- 242.23 Savings clause.

§ 242.1 *Order to show cause and notice of hearing*—(a) *Commencement.* Every proceeding to determine the deportability of an

SUPPLEMENT

alien in the United States is commenced by the issuance and service of an order to show cause by the Service. In the proceeding the alien shall be known as the respondent. Orders to show cause may be issued by district directors, deputy district directors, district officers who are in charge of investigations.

(b) *Statement of nature of proceeding.* The order to show cause will contain a statement of the nature of the proceeding, the legal authority under which the proceeding is conducted, a concise statement of factual allegations informing the respondent of the acts of conduct alleged to be in violation of the law, and a designation of the charges against the respondent and of the statutory provisions alleged to have been violated. The order will require the respondent to show cause why he should not be deported. The order will call upon the respondent to appear before a special inquiry officer for hearing at the time and place stated in the order, not less than seven days, after the service of such order, except that where the issuing officer, in his discretion, believes that the public interest, safety, or security so requires, he may provide in the order for a shorter period. The issuing officer may, in his discretion, fix a shorter period in any other case at the request of and for the convenience of the respondent.

(c) *Service.* Service of the order to show cause shall be made by having a copy delivered to the respondent by an immigration officer or by mailing it to the respondent at his last known address by certified or registered mail, return receipt requested. Delivery of a copy within this rule means: handing it to the respondent or leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. The post office return receipt or the certificate by the officer serving the order by personal delivery setting forth the manner of said service shall be proof of service.

§ 242.2 *Apprehension, custody, and detention*—(a) *Warrant of arrest.* At the commencement of any proceeding under this part or at any time thereafter and up to the time the respondent becomes subject to supervision under the authority contained in section 24 (d) of the act, the respondent may be arrested and taken into custody under the authority of a warrant of arrest issued by a district director whenever, in his discretion, it appears that the arrest of the respondent is necessary or desirable. If, after the issuance of a warrant of arrest, a determination is made not to serve it, the district director who issued the warrant of arrest may authorize its cancellation.

(b) *Authorized officer.* A district director may exercise the authority contained in section 242 of the act to continue or detain an alien in, or release him from custody, and shall promptly notify the

IMMIGRATION AND NATIONALITY ACT

alien in writing of any determination made in his case. The alien may appeal to the Board of Immigration Appeals from any determination of such officer relating to bond, parole, or detention. Such appeal shall be taken by filing a notice of appeal with the district director within 5 days after the date when written notification of the determination is delivered in person or mailed to the alien. Upon the filing of such a notice of appeal, the district director shall immediately transmit to the Board of Immigration Appeals all records and information pertaining to his action in relation to such bond, parole, or detention and shall notify the regional commissioner. The filing of such an appeal shall not operate to disturb the custody of the alien or to stay the administrative proceedings or deportation. The foregoing provisions concerning notice, reporting, and appeal shall not apply when the Service notifies the alien that it is ready to execute the order of deportation and takes him into custody for that purpose.

(c) *Revocation of bond or parole.* When an alien who having been arrested and taken into custody has been released under bond or released on parole, such bond or parole may be revoked at any time in the discretion of the district director, in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and cancelled.

(d) *Supervision.* Until an alien against whom a final order of deportation has been outstanding for more than six months is deported, he shall be subject to supervision by a district director or immigration officer acting for him and required to comply with the provisions of section 242 (d) of the act relating to his availability for deportation.

§ 242.3 *Aliens confined to institutions; incompetents, minors—(a) Service.* If the respondent is confined in a penal or mental institution or hospital and is competent to understand the nature of the proceedings, a copy of the order to show cause, and the warrant of arrest, if issued, shall be served upon him and upon the person in charge of the institution or hospital. If the respondent is not competent to understand the nature of the proceedings, a copy of the order to show cause, and the warrant of arrest, if issued, shall be served only upon the person in charge of the institution or hospital in which the respondent is confined, such service being deemed service upon the respondent. In case of mental incompetency, whether or not confined in an institution, and in the case of a child under 16 years of age, a copy of the order and of the warrant of arrest, if issued, shall be served upon such respondent's guardian, near relative, or friend, whenever possible.

SUPPLEMENT

(b) *Service custody; cost of maintenance.* An alien confined in an institution or hospital shall not be accepted into physical custody by the Service until an order of deportation has been made and the Service is ready to deport the alien. When an alien is an inmate of a public or private institution at the time of the commencement of the deportation proceedings, expense for the maintenance of the alien shall not be incurred by the Government until he is taken into physical custody by the Service.

§ 242.4 *Fingerprints and photographs.* Every alien 14 years of age or older against whom proceedings are commenced under this part shall be fingerprinted. Any such alien, regardless of his age, shall be photographed if a photograph is required by the district director.

§ 242.5 *Voluntary departure prior to commencement of hearing—*
(a) *Authorized officers.* The authority contained in section 242 (b) of the act to permit aliens to depart voluntarily from the United States may be exercised by district directors, district officers who are in charge of investigations, officers in charge, and chief patrol inspectors.

(b) *Application.* Any alien who believes himself to be eligible for voluntary departure under section 242 (b) of the act may apply therefor at an office of the Service any time prior to the commencement of his hearing under an order to show cause. The officers designated in paragraph (a) of this section may deny or grant the application and determine the conditions under which the alien's departure shall be effected. An appeal shall not lie from a denial of an application for voluntary departure under this section, but the denial shall be without prejudice to the alien's right to apply for relief from deportation under any provision of law.

(c) *Revocation.* If, subsequent to the granting of an application for voluntary departure under this section, it is ascertained that the application should not have been granted, that grant may be revoked without notice by any district director, district officer in charge of investigations, officer in charge, or chief patrol inspectors.

§ 242.6 *Aliens deportable under section 242 (f) of the act.* In the case of an alien within the purview of section 242 (f) of the act, the order to show cause shall charge him with deportability only under section 242 (f) of the act. The prior order of deportation and evidence of the execution thereof, properly identified, shall constitute *prima facie* cause for deportation under that section.

§ 242.7 *Cancellation of proceedings.* If an order to show cause has been issued, a district director, deputy district director, or district

IMMIGRATION AND NATIONALITY ACT

officer who is in charge of investigations may cancel the order to show cause or, prior to the actual commencement of the hearing under a served order to show cause, terminate proceedings thereunder, if in either case he is satisfied that the respondent is actually a national of the United States, or is not deportable under the immigration laws, or is deceased, or is not in the United States. If an order to show cause has been cancelled or proceedings have been terminated pursuant to this section, any outstanding warrant of arrest shall also be cancelled.

§ 242.8 Special inquiry officers—(a) Authority. In a proceeding conducted under this part, the special inquiry officer shall have the authority to determine deportability and to make decisions including orders of deportation as provided by section 242 (b) of the act, to reinstate orders of deportation as provided by section 242 (f) of the act, to suspend deportation and authorize voluntary departure as provided by section 244 of the act, to authorize preexamination as provided by Part 235a of this chapter, to take or cause depositions to be taken, to certify the completeness and correctness of transcripts of hearings, and to take any other action consistent with applicable provisions of law and regulations. In his discretion, the special inquiry officer may exclude from the record any argument in connection with motions, applications, or objections, but in such event the person affected may submit a brief. Nothing contained in this part shall be construed to diminish the authority conferred on special inquiry officers by the act.

(b) Withdrawal and substitution of special inquiry officers. The special inquiry officer assigned to conduct the hearing shall at any time withdraw if he deems himself disqualified. If a hearing has begun but no evidence has been adduced other than by the respondent's pleading pursuant to § 242.16 (b), or if a special inquiry officer becomes unavailable to complete his duties within a reasonable time, or if at any time the respondent consents to a substitution, another special inquiry officer may be assigned to complete the case. The new special inquiry officer shall familiarize himself with the record in the case and shall state for the record that he has done so.

§ 242.9 Examining officers—(a) Authority. When an additional immigration officer is assigned to a proceeding under this part to perform the duties of an examining officer, he shall present the evidence on behalf of the Government as to deportability as provided in section 242 (b) of the act. The examining officer shall also inquire thoroughly into the respondent's eligibility for any requested discretionary relief from deportation and shall develop such other information as may be pertinent to the proper disposition of any case

SUPPLEMENT

to which he is assigned. The examining officer is authorized to appeal from a decision of a special inquiry officer pursuant to § 242.21 and to move for reopening or reconsideration pursuant to § 103.5 of this chapter.

(b) *Assignment.* The district director shall assign an examining officer to every case within the provisions of § 242.16 (c). In his discretion, or at the request of the special inquiry officer, the district director may assign an examining officer to any other case at any stage of the proceedings.

§ 242.10 *Representation by counsel.* The respondent may be represented at the hearing by an attorney or other representative qualified under Part 292 of this chapter.

§ 242.11 *Incompetent respondents.* When it is impracticable for the respondent to be present at the hearing because of mental incompetency, the guardian, near relative, or friend who was served with a copy of the order to show cause shall be permitted to appear on behalf of the respondent. If such a person cannot reasonably be found or fails or refuses to appear, the custodian of the respondent shall be requested to appear on behalf of the respondent.

§ 242.12 *Interpreter.* Any person acting as interpreter in a hearing under this part shall be sworn to interpret and translate accurately, unless the interpreter is an employee of the Service, in which event no such oath shall be required.

§ 242.13 *Postponement and adjournment of hearing.* Prior to the commencement of a hearing, the district director may grant a reasonable postponement for good cause shown, at his own instance upon notice to the respondent, or upon request of the respondent. After the commencement of the hearing, the special inquiry officer may grant a reasonable adjournment either at his own instance or, for good cause shown, upon application by the respondent or the examining officer. A continuance of the hearing for the purpose of allowing the respondent to obtain representation shall not be granted more than once unless sufficient cause for the granting of more time is shown.

§ 242.14 *Evidence—(a) Sufficiency.* A determination of deportability shall not be valid unless based on reasonable, substantial, and probative evidence.

(c) *Use of prior statements.* The special inquiry officer may receive in evidence any oral or written statement which is material and relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial.

IMMIGRATION AND NATIONALITY ACT

(d) *Testimony.* Testimony of witnesses appearing at the hearing shall be under oath or affirmation administered by the special inquiry officer.

§ 242.15 *Contents of record.* The hearing before the special inquiry officer, including the respondent's pleading, the testimony, the exhibits, the special inquiry officer's decision, and all written orders, motions, appeals, and other papers filed in the proceeding shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the special inquiry officer.

§ 242.16 *Hearing*—(a) *Opening.* The special inquiry officer shall advise the respondent of his right to representation, at no expense to the Government, by counsel of his own choice authorized to practice in the proceedings and require him to state then and there whether he desires representation; advise the respondent that he will have a reasonable opportunity to examine and object to the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; place the respondent under oath; read the factual allegations and the charges in the order to show cause to the respondent and explain them in nontechnical language, and enter the order to show cause and warrant of arrest, if any, as exhibits in the record.

(b) *Pleading by respondent.* The special inquiry officer shall require the respondent to plead to the order to show cause by stating whether he admits or denies the factual allegations and his deportability under the charges contained therein. If the respondent admits the factual allegations and admits his deportability under the charges and the special inquiry officer is satisfied that no issues of law or fact remain, the special inquiry officer may determine that deportability as charged has been established by the admissions of the respondent.

(c) *Issues of deportability.* When deportability is not determined under the provisions of paragraph (b) of this section, the special inquiry officer shall request the assignment of an examining officer, and shall receive evidence as to any unresolved issues, except that no further evidence need be received as to any facts admitted during the pleading.

(d) *Additional charges.* An examining officer who has been assigned to a case may at any time during a hearing lodge additional charges of deportability, including factual allegations against the respondent. When additional charges are lodged, the special inquiry officer shall explain these charges to the respondent in nontechnical language and shall advise him if he is not represented by counsel,

SUPPLEMENT

that he may be so represented. The special inquiry officer shall also inform the respondent that he may have a reasonable time within which to meet the additional charges. The respondent shall be required to state then and there whether he desires a continuance for either of these reasons.

(e) *Application for discretionary relief.* The respondent may apply during the hearing for suspension of deportation on Form I-256A, voluntary departure under section 244 of the act, or such other discretionary relief as may be appropriate to the case. The respondent has the burden of establishing his eligibility for discretionary relief and may submit evidence in support of his application.

§ 242.17 *Decision of special inquiry officer*—(a) *Contents.* The decision of the special inquiry officer may be oral or written. Except in cases where deportability is determined on the pleadings pursuant to § 242.16 (b), the decision shall include a summary of the evidence and shall set forth findings of fact and conclusions of law as to deportability. Adoption by the special inquiry officer of the factual allegations and charges in the order to show cause shall constitute the setting forth of findings of fact and conclusions of law within the meaning of this paragraph. The decision shall also contain a discussion of the evidence relating to the respondent's eligibility for any discretionary relief requested and the reasons for granting or denying the application. The decision shall be concluded with the order of the special inquiry officer.

(b) *Summary decision.* Notwithstanding the provisions of paragraph (a) of this section, in any case where deportability is determined on the pleadings pursuant to § 242.16 (b) and the respondent does not apply for any discretionary relief, or the respondent applies for voluntary departure only and the special inquiry officer grants the application, the special inquiry officer may enter a summary decision on Form I-38, if deportation is ordered, or on Form I-39 if voluntary departure is granted with an alternate order of deportation.

(c) *Use of non-record information.* In determining an application for discretionary relief from deportation in proceedings under this part, the special inquiry officer may consider and rely upon information not contained in the record only when the Commissioner has determined that it is in the interest of national security and safety to do so.

§ 242.18 *Order of special inquiry officer.* The order of the special inquiry officer shall be that the alien be deported, or that the proceedings be terminated, or that the alien's deportation be suspended, or that the alien be granted voluntary departure at his own expense in

IMMIGRATION AND NATIONALITY ACT

lieu of deportation, with or without preexamination, or any combination of these orders in the alternative or that such other action be taken in the proceedings as may be required for the appropriate disposition of the case.

§ 242.19 *Notice of decision*—(a) *Written decision*. A written decision shall be served upon the respondent and the examining officer, if any, by the district director together with the notice referred to in § 3.3 of this chapter. Service by mail is complete upon mailing.

(b) *Oral decision*. An oral decision shall be stated by the special inquiry officer in the presence of the respondent and the examining officer, if any, at the conclusion of the hearing. Unless appeal from the decision is then and there waived, a typewritten copy of the oral decision shall be served in the same manner as a written decision.

(c) *Summary decision*. When the special inquiry officer renders a summary decision as provided in § 242.17 (b), he shall serve a copy thereof upon the respondent at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall also be furnished with two copies of Notice of Appeal, Form I-290A, and advised of the provisions of § 242.21 (c).

§ 242.20 *Finality of order*. The order of the special inquiry officer shall be final except when the case has been certified as provided in Part 3 and Part 103 of this chapter, or an appeal is taken to the Board of Immigration Appeals by the respondent or by the examining officer.

§ 242.21 *Appeals*—(a) *Non-appealable cases*. An appeal shall not lie from a decision of a special inquiry officer denying an application for voluntary departure or preexamination as a matter of discretion where the special inquiry officer has found the alien statutorily eligible for voluntary departure or eligible for preexamination pursuant to Part 235a of this chapter, and the alien has been in the United States for a period of less than five years at the time of the service of the order to show cause in deportation proceedings. A Notice of Appeal shall not be filed or accepted in any case within the provisions of this paragraph.

(b) *Cases appealable*. Pursuant to Part 3 of this chapter, an appeal shall lie from a decision of the special inquiry officer under this part to the Board of Immigration Appeals (except in cases covered by the provisions of § 242.20 relating to certifications). The reasons for the appeal shall be stated briefly in the Notice of Appeal, Form I-290A. When the conclusion as to deportability is contested, the appellant shall be required to indicate in the Notice of Appeal, Form I-290A, the particular findings of fact or conclusions of law with which he

SUPPLEMENT

disagrees. Failure to do so may constitute a ground for dismissal of the appeal by the Board.

(c) *Time for taking appeal.* An appeal shall be taken within ten days after the mailing of a written decision or of a typewritten copy of an oral decision or the service of a summary decision on Form I-38 or I-39.

§ 242.22 *Proceedings under section 242 (f) of the act*—(a) *Applicable regulations.* Except as hereafter provided in this section, all the provisions of §§ 242.8 to 242.21, inclusive, and § 242.23 shall apply to the case of a respondent within the purview of § 242.6.

(b) *Deportability.* In determining the deportability of an alien alleged to be within the purview of § 242.6, the issues shall be limited solely to a determination of the identity of the respondent, i.e., whether the respondent is in fact an alien who was previously deported, or who departed while an order of deportation was outstanding; whether the respondent was previously deported as a member of any of the classes described in paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18) of section 241 (a) of the act; and whether respondent unlawfully reentered the United States.

(c) *Order.* If deportability as charged pursuant to § 242.6 is established, the special inquiry officer shall order that the respondent be deported under the previous order of deportation in accordance with section 242 (f) of the act, or shall enter such other order as may be required for the appropriate disposition of the case.

(d) *Examining officer; additional charges.* When an examining officer is assigned to a proceeding under this section and additional charges are lodged against the respondent, the provisions of paragraph (b) of this section shall cease to apply.

§ 242.23 *Savings clause.* Deportation proceedings in which warrants of arrest were served prior to the date that orders to show cause were authorized to be issued pursuant to this part shall be completed in accordance with the regulations which were in effect immediately preceding that date, unless the respondents consent to proceed under the current regulations.

PART 318—PENDING DEPORTATION PROCEEDINGS

§ 318.1 *Warrant of arrest.* For the purposes of section 318 of the act, an order to show cause issued under Part 242 of this chapter shall be regarded as a warrant of arrest.

IMMIGRATION AND NATIONALITY ACT

ALIEN CREWMAN IDENTIFICATION CARDS AND WAIVERS

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

Section 242.7a is added to read as follows:

§ 242.7a *Waiver of documents; returning residents.* Pursuant to the authority contained in section 211 (b) of the act, an alien previously lawfully admitted to the United States for permanent residence who, upon return from a temporary absence of less than one year in a country or countries of the Western Hemisphere, was excludable because of failure to have or to present a valid passport, immigrant visa, reentry permit, border crossing card, or other document required at the time of entry, may be granted a waiver of such requirement in the discretion of the district director, or in deportation proceedings in the discretion of the special inquiry officer: *Provided*, That such alien (a) was not otherwise excludable at the time of entry, or (b) having been otherwise excludable at the time of entry is with respect thereto qualified for an exemption from deportability under section 7 of the act of September 11, 1957, and (c) is not otherwise subject to deportation. Denial of a waiver by the district director shall not be appealable but shall be without prejudice to renewal of an application and reconsideration in proceedings before a special inquiry officer.

Page 392

PART 243—DEPORTATION OF ALIENS IN THE UNITED STATES

Sec.

- 243.1 Issuance of warrants of deportation; country to which alien shall be deported; cost of detention; care and attention of alien.
- 243.2 Finality of decision.
- 243.3 Execution of warrants of deportation.
- 243.11 Special care and attention for aliens.
- 243.12 Deportation of lepers.
- 243.13 Alien addict discharged from United States Public Health Service Hospital.
- 243.14 Notice to transportation line.
- 243.15 Deportation to foreign contiguous territory.
- 243.31 Fees.

§ 243.1 *Issuance of warrants of deportation; country to which alien shall be deported; cost of detention; care and attention of alien*—(a) *Issuance.* A warrant of deportation shall be based upon the final order of deportation and shall be issued by a district director or an immigration officer acting for him.

(b) *Determination of place and cost of deportation, and necessity for attendants.* District directors shall exercise the authority con-

SUPPLEMENT

tained in section 243 of the Immigration and Nationality Act to designate the country to which, and at whose expense an alien in the United States shall be deported, and to determine when an alien's mental or physical condition requires the employment of a person to accompany the alien.

§ 243.2 *Finality of decision.* No appeal shall lie from the decision of the district director in the exercise of the authority described in § 243.1.

§ 243.3 *Execution of warrants of deportation*—(a) *Taking alien into custody.* Upon the issuance of a warrant of deportation or as soon thereafter as the circumstances of the case require, the alien, if not in the physical custody of the Service, shall be taken into such custody under the authority of such warrant of deportation and deported.

(b) *Stay of deportation.* (1) Except as otherwise provided in this part, the district director having administrative jurisdiction over the place where the alien is located may, in the exercise of his discretion, and for good cause shown, stay the execution of a warrant and order of deportation for such time and under such conditions as he may deem appropriate. He may grant such stay upon his own instance, or upon request of the alien. A request for a stay by the alien shall be in writing, shall be filed with the district director, and shall be supported by an affidavit setting forth the reasons for the request and by such other evidentiary matter as may support the request.

(2) If the request for a stay of deportation is predicated upon a claim by the alien that he would be subject to physical persecution if deported to the country designated by the Service, he shall be requested, upon notice, to appear before a special inquiry officer for interrogation under oath. The alien may have present with him, at his own expense, during the interrogation any attorney or representative authorized to practice before the Service. The alien may submit any evidence in support of his claim which he believes should be considered by the special inquiry officer. Upon completion of the interrogation, the special inquiry officer shall prepare a written memorandum of his findings and a recommendation which shall be forwarded to the regional commissioner together with all the evidence and information submitted by the alien or which may be applicable to the case. The alien shall be served with a copy of the special inquiry officer's memorandum and recommendation and shall be allowed five days from date of service within which to submit written representations to the regional commissioner. If the alien refuses

IMMIGRATION AND NATIONALITY ACT

to appear for interrogation before a special inquiry officer when requested to do so or waives his appearance, all the pertinent evidence and available information in the case shall immediately be submitted to the regional commissioner. The decision whether to withhold deportation and, if so, for what period of time shall be finally made by the regional commissioner upon consideration of all the evidence submitted by the alien and any other pertinent evidence or available information.

(3) Notice of disposition of the alien's request under subparagraph (1) or (2) of this paragraph shall be served upon him, but neither the making of the request nor the failure to receive a notice of decision thereon shall relieve or excuse the alien from presenting himself for deportation at the time and place designated for his deportation. No appeal shall lie from a denial of a request for a stay of deportation, but such denial shall not preclude the Board from granting a stay in connection with a motion to reopen or a motion to reconsider as provided in Part 3 of this chapter.

(c) *Permission to depart when ordered deported.* A district director may, in his discretion, permit an alien who has been ordered deported to deport himself from the United States at his own expense and to a destination of his own choice. Any alien who has so left the United States is considered to have been deported in pursuance of law.

§ 243.11 *Special care and attention for aliens*—(a) *Duty of transportation line.* Whenever it is determined by the district director that an alien about to be deported requires special care and attention, the transportation line responsible for the expense of the alien's deportation shall provide for such care and attention as may be required by the alien's condition, not only during the voyage from the United States to the foreign country to which the alien is to be deported, but also during the foreign inland journey. The alien shall be delivered to the master, commanding officer, or the officer in charge of the vessel or aircraft on which the alien is to be deported, who shall be given Forms I-287, I-287A, and I-287B. The reverse of Form I-287A shall be signed by the officer of the vessel or aircraft to whom the alien has been delivered and immediately returned to the immigration officer making delivery. Form I-287B shall be retained by the receiving officer and subsequently filled out by the agents or persons therein designated and returned by mail to the district director named on the form.

(b) *Procedure at foreign port of disembarkation.* The transportation line shall at its own expense forward the alien from the foreign port of disembarkation to his destination in charge of a proper

SUPPLEMENT

attendant except only in cases where the foreign public officials decline to allow such attendant to proceed and themselves take charge of the alien, which fact shall be recorded by the transportation line executing the form provided in the lower half of the reverse of Form I-287B. If the foreign public officials do not take charge of the alien at the port of disembarkation, but at an interior frontier, both forms on the reverse of Form I-287B shall be filled out, the former in relation to the inland journey as far as such frontier.

(c) *Failure of transportation line to provide special care.* Whenever a transportation line responsible for the expenses of the alien's deportation fails, refuses, or neglects to provide personal care and attention for an alien requiring such care and attention, or whenever such line fails, refuses, or neglects to return Form I-287B properly executed within 90 days after the departure of such an alien, or otherwise fails, refuses, or neglects to comply with the provisions of this section, the district director shall thereafter and without notice employ suitable persons, at the expense of the transportation line, to accompany aliens requiring personal care and attention who are deported on any vessel or aircraft of such line.

§ 243.12 *Deportation of lepers.* Cases of aliens afflicted with leprosy shall be handled in accordance with the governing regulations and instructions issued by the Surgeon General, United States Public Health Service, Department of Health, Education, and Welfare.

§ 243.13 *Alien addict discharged from United States Public Health Service Hospital.* Any alien who has been sentenced to imprisonment and has been ordered deported and who has been transferred as an alien addict to a hospital of the United States Public Health Service provided for in the Public Health Service Act, as amended (58 Stat. 696; 42 U. S. C. 201 et seq.), shall be taken into custody upon his discharge from such narcotic farm and deported without requiring his return to the penal institution from which he came to such narcotic farm.

§ 243.14 *Notice to transportation line.* If an alien's deportation is to be effected by vessel or aircraft, notice of the proposed deportation shall be given to the transportation line concerned, together with a brief description of the alien and any other appropriate data, including the cause of deportation, the alien's physical and mental condition, and the place to which the alien is to be taken by such line. Any request from such line to defer the delivery of the alien for deportation shall be accompanied by a written agreement from the line that it will be responsible for all detention expenses resulting from such deferment.

IMMIGRATION AND NATIONALITY ACT

§ 243.15 *Deportation to foreign contiguous territory.* Aliens ordered deported to foreign contiguous territory shall be returned across the border at the nearest port unless humanitarian or other reasons make it advisable to effect deportation through some other port. Deportation to a seaport in such foreign territory shall be authorized whenever that appears advisable or more economical than deportation across a land boundary.

§ 243.31 *Fees.* Except as otherwise provided in this section and Part 103 of this chapter, a stay of deportation requested by an alien under this part shall be accompanied by a fee of \$25 as prescribed by, and remitted in accordance with, the provisions of Part 103 of this chapter. In any case in which an alien or other party affected is unable to pay the fee for requesting a stay of deportation, he shall file with the request for a stay his affidavit stating the nature of the request for a stay, the affiant's belief that he is entitled to redress, his inability to pay the required fee, and request permission to prosecute the stay without prepayment of such fee. If such an affidavit is filed, the district director, if the request for a stay of deportation is made pursuant to the provisions of § 243.3 (b) (1), may, in his discretion, stay deportation without prepayment of fee. If such an affidavit is filed and the request for a stay of deportation is made pursuant to the provisions of § 243.3 (b) (2), the special inquiry officer shall, if he believes that the request for a stay is not made in good faith, certify in writing his reasons for such belief for consideration by the regional commissioner. The regional commissioner may, in his discretion, withhold deportation without prepayment of fee.

Page 395

PART 244—SUSPENSION OF DEPORTATION AND VOLUNTARY DEPARTURE

Sec.

- 244.1 Voluntary departure subsequent to commencement of hearing.
- 244.2 Suspension of deportation.
- 244.12 Application for voluntary departure subsequent to commencement of hearing; disposition.
- 244.14 Verification of departure; cancellation of delivery bond.
- 244.15 Extension of time to depart.

§ 244.1 *Voluntary departure subsequent to commencement of hearing.* Subject to the provisions of section 244 (e) of the act and this part, a special inquiry officer may, subsequent to the commencement of the hearing provided for in Part 242 of this chapter, grant voluntary departure in lieu of deportation in the case of any alien who is the subject of deportation proceedings before such officer.

SUPPLEMENT

§ 244.2 *Suspension of deportation.* An application for suspension of deportation shall be submitted in accordance with, and subject to, the provisions of Part 242 of this chapter and shall be determined and disposed of in accordance with the provisions of Part 242 of this chapter and this part.

§ 244.12 *Application for voluntary departure subsequent to commencement of hearing; disposition.* If the special inquiry officer is satisfied that:

- (a) The alien is willing and able to depart promptly from the United States,
- (b) The alien apparently will be admitted to the country of his destination,
- (c) The alien, if deportable upon any ground set forth in paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17) or (18) of section 241 (a) of the Immigration and Nationality Act, is within the classes of persons who are eligible for suspension of deportation under paragraphs (4) or (5) of section 244 (a) of the Immigration and Nationality Act.
- (d) The alien is and has been a person of good moral character for at least 5 years immediately preceding his application for voluntary departure, and
- (e) That the relief requested should be granted,

he shall enter an order as provided in Part 242 of this chapter.

§ 244.14 *Verification of departure; cancellation of delivery bond.* An alien's voluntary departure from the United States in accordance with the provisions of this part, shall, if verified to the satisfaction of the officer having administrative jurisdiction over the office in which the application for voluntary departure was made, serve to terminate further proceedings in the case and to cancel any outstanding delivery bond.

§ 244.15 *Extension of time to depart.* An application for extension of time within which to depart voluntarily from the United States in lieu of deportation shall be made to the officer having administrative jurisdiction of the office in which the case is pending. Such officer may, in his discretion, grant or deny the application. His decision shall be in writing and served upon the alien. No appeal shall lie from a decision denying an application for an extension of time within which to depart.

IMMIGRATION AND NATIONALITY ACT

Page 397

PART 245—ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF A PERSON ADMITTED FOR PERMANENT RESIDENCE

Sec.

- 245.1 Application.
- 245.2 Documentary requirements.
- 245.3 Medical examination.
- 245.4 Preexamination without departing.

§ 245.1 *Application.* An alien whose deportability has not been established in proceedings under Part 242 of this chapter subsequent to August 21, 1958, may if he believes he meets the eligibility requirement of section 245 of the act, file an application Form I-507 with the district director in whose district he resides. A visa shall not be held to be available for a person claiming a preference quota or a nonquota status under section 101 (a) (27) (A) or (F) unless a petition to accord such status has been approved in accordance with section 204 or 205 of the act. A special nonquota visa shall not be held to be available under section 15 of the act of September 11, 1957, unless the alien, having been admitted as a nonimmigrant visitor or student prior to April 18, 1958, has been allocated such a visa by the Director, Office of Refugee and Migration Affairs, Department of State. Except as provided in Part 235a of this chapter, an application under this section shall be the sole method of requesting the exercise of discretion under section 5, 6, or 7 of the act of September 11, 1957, insofar as they relate to excludability by an alien in the United States. Applications for the benefits of section 9 or 13 of the act of September 11, 1957, shall be filed in like manner as an application under section 245 of the Act. An alien who has a nonimmigrant status under paragraph (15) (A), (15) (E), or (15) (G) of section 101 (a) of the Immigration and Nationality Act, or has an occupational status which would, if he were seeking admission to the United States, entitle him to a nonimmigrant status under any of such paragraphs of section 101 (a) of the Immigration and Nationality Act, shall not be eligible to apply for adjustment of status without first executing and submitting with his application the written waiver required by section 247 (b) of the Immigration and Nationality Act and Part 247 of this chapter. In all cases the applicant shall be notified of the decision and if denied of the reasons therefor and his right to appeal in accordance with the provisions of Part 103 of this chapter (page 291).

§ 245.2 *Documentary requirements.* The provisions of Part 211 of this chapter relating to the documentary requirements for immigrants shall not apply to an applicant for adjustment of status under this part.

SUPPLEMENT

§ 245.3 *Medical examination.* Upon acceptance of an application, the applicant shall be requested to submit to an examination by a medical officer of the United States Public Health Service, whose report setting forth the findings of the mental and physical condition of the applicant shall be incorporated into the record. Any applicant certified under paragraph (1), (2), (3), (4), or (5) of section 212 (a) of the act may appeal to a board of medical officers of the United States Public Health Service as provided in section 234 of the act and Part 236.

§ 245.4 By enactment of the amendment to section 245 of the Immigration and Nationality Act on August 21, 1958, most aliens whose status could have been adjusted by preexamination in accordance with Part 235a of Title 8, Code of Federal Regulations, may acquire permanent residence without departing from the United States. To enable persons in the United States who may not be eligible for the new statutory privilege to attempt adjustment through preexamination, and to provide for an orderly termination of the extra-statutory preexamination privilege, it is proposed that applications for preexamination continue to be received through November 30, 1958, and that all applications be adjudicated and preexamination completed before June 30, 1959. Pending adoption of final regulations, applications for preexamination by *prima facie* eligibles may be accepted.

Page 401

PART 246—RESCISSON OF ADJUSTMENT OF STATUS

Sec.

- 246.11 Notice.
- 246.12 Disposition of case.
- 246.13 Decision by the regional commissioner.
- 246.14 Surrender of Form I-151.

§ 246.11 *Notice.* If it appears to a district director that a person residing in his district was not in fact eligible for the adjustment of status made in his case, he shall cause a notice to be served on such person informing him of the grounds upon which it is intended to rescind the adjustment of status. The notice shall also inform the person that he may submit, within 30 days from the date of service of the notice, an answer in writing under oath setting forth reasons why such rescission should not be made. The notice shall also advise the person that he may, within such period and upon his request have an opportunity to appear in person, in support or in lieu of his written answer, before an immigration officer designated for that purpose. The person shall further be advised that he may have the

IMMIGRATION AND NATIONALITY ACT

assistance of counsel without expense to the government of the United States in the preparation of his answer or in connection with his personal appearance and may examine the evidence upon which it is proposed to base such rescission at a Service office.

§ 246.12 Disposition of case—(a) *Allegations admitted or no answer filed.* If the answer admits the allegations in the notice, or if no answer is filed within the 30-day period, and the status of permanent resident was acquired through suspension of deportation under section 19 (c) of the Immigration Act of February 5, 1917 or under section 244 of the Immigration and Nationality Act, the district director shall forward the file and all of the papers to the regional commissioner, for further action in accordance with section 246 of the Immigration and Nationality Act. If the answer admits the allegations in the notice, or if no answer is filed within the 30-day period, and the status of permanent resident was acquired through adjustment of status other than through suspension of deportation, the district director shall rescind the adjustment of status previously granted and no appeal shall lie from such decision.

(b) *Answer filed; personal appearance.* Upon receipt of an answer asserting a defense to the allegations made in the notice without requesting a personal appearance, or if a personal appearance is requested or directed, the case shall be assigned to an immigration officer. Pertinent evidence, including testimony of witnesses, shall be incorporated in the record. At the conclusion of the interview, the immigration officer shall prepare a report summarizing the evidence and containing his findings and recommendation. The record, including the report and recommendation of the immigration officer, shall be forwarded to the district director who caused the notice to be served. The district director shall note on the report of the immigration officer whether he approves or disapproves the recommendation of the immigration officer. If the decision of the district director is that the matter be terminated, the alien shall be notified thereof and no further action shall be taken unless the case is certified to the regional commissioner as provided in § 103.4 of this chapter. If the decision of the district director is that the adjustment of status should be rescinded, and the status of permanent resident was acquired through suspension of deportation under section 19 (c) of the Immigration Act of 1917 or under section 244 of the Immigration and Nationality Act, the district director shall serve a copy of his decision, including the report and recommendation of the immigration officer, upon the alien who shall be allowed ten days to file exceptions; thereafter, the record, including any exceptions filed by the alien, shall be forwarded to the regional commissioner for further action.

SUPPLEMENT

in accordance with section 246 of the Immigration and Nationality Act. If the status of permanent resident was acquired through adjustment of status other than through suspension of deportation, the district director shall enter a decision rescinding the adjustment of status previously granted. The alien shall be informed of the decision and of the reasons therefor. From the decision of the district director an appeal may be taken as provided in Part 103 of this chapter (page 291).

§ 246.13 *Decision by the regional commissioner.* When action has been completed by the regional commissioner, the record shall be returned to the district director who shall serve a copy of the decision upon the alien. If the decision of the regional commissioner is that adjustment of status, which was acquired through suspension of deportation, be rescinded, he shall report the case to Congress as provided in section 246 of the Immigration and Nationality Act.

§ 246.14 *Surrender of Form I-151.* An alien whose status as a permanent resident has been rescinded or withdrawn in accordance with section 246 of the act and this part, shall, upon demand, promptly surrender to the district director having administrative jurisdiction over the office in which the action under this part was taken the Form I-151 issued to him at the time of the grant of permanent resident status.

Page 404

PART 247—ADJUSTMENT OF STATUS OF CERTAIN RESIDENT ALIENS

Sec.

- 247.1 Scope of part.
- 247.11 Notice.
- 247.12 Disposition of case.
- 247.13 Disposition of Form I-508.
- 247.14 Surrender of documents.

§ 247.1 *Scope of part.* The provisions of this part apply to an alien who is lawfully admitted for permanent residence and has an occupational status which, if he were seeking admission to the United States, would entitle him to a nonimmigrant status under paragraph (15) (A) or (15) (G) of section 101 (a) of the act, and to his immediate family; also, an alien who was lawfully admitted for permanent residence and has an occupational status which, if he were seeking admission to the United States, would entitle him to a nonimmigrant status under paragraph (15) (E) of section 101 (a) of the act, and to his spouse and children.

§ 247.11 *Notice.* If it appears to a district director that an alien residing in his district, who was lawfully admitted for permanent

IMMIGRATION AND NATIONALITY ACT

residence, has an occupational status described in section 247 of the act, he shall cause a notice on Form I-509 to be served on such alien informing him that it is proposed to adjust his status, unless the alien requests that he be permitted to retain his status as a resident alien and executes and files with such district director a Form I-508 (Waiver of Rights, Privileges, Exemptions and Immunities) within 10 days from receipt of the notice, or the alien, within such 10-day period, files with the district director a written answer under oath setting forth reasons why his status should not be adjusted. The notice shall also advise the person that he may, within such period and upon his request have an opportunity to appear in person, in support or in lieu of his written answer, before an immigration officer designated for that purpose. The person shall further be advised that he may have the assistance of counsel without expense to the government of the United States in the preparation of his answer or in connection with such personal appearance, and may examine the evidence upon which it is proposed to base such adjustment.

§ 247.12 Disposition of case—(a) Allegations admitted or no answer filed. If the waiver Form I-508 is not filed by the alien within the time prescribed, and the answer admits the allegations in the notice, or no answer is filed, the district director shall place a notation on the notice describing the alien's adjusted nonimmigrant status and shall cause a set of Forms I-94 to be prepared evidencing the nonimmigrant classification to which the alien has been adjusted and no appeal shall lie from such decision. Form I-94A shall be delivered to the alien and shall constitute notice to him of such adjustment. The alien's nonimmigrant status shall be for such time, under such conditions, and subject to such regulations as are applicable to the particular nonimmigrant status granted and shall be subject to such other terms and conditions, including the exaction of bond as the district director may deem appropriate.

(b) Answer filed; personal appearance. Upon receipt of an answer asserting a defense to the allegations made in the notice without requesting a personal appearance, or if a personal appearance is requested or directed, the case shall be assigned to an immigration officer. Pertinent evidence, including testimony of witnesses, shall be incorporated in the record. The immigration officer shall prepare a report summarizing the evidence and containing his findings and recommendation. The record, including the report and recommendation of the immigration officer, shall be forwarded to the district director who caused the notice to be served. The district director shall note on the report of the immigration officer whether he approves or disapproves the recommendation of the immigration officer. If the

SUPPLEMENT

decision of the district director is that the matter be terminated, the alien shall be informed of such decision. If the decision of the district director is that the status of the alien should be adjusted to that of a nonimmigrant, his decision shall provide that unless the alien, within 10 days of receipt of notification of such decision, requests permission to retain his status as an immigrant and files with the district director Form I-508, the alien's immigrant status be adjusted to that of a nonimmigrant. The alien shall be informed of such decision and of the reasons therefor, and of his right to appeal in accordance with the provisions of Part 103 of this chapter (page 291). If the alien does not request that he be permitted to retain status and file the Form I-508 within the period provided therefor, the district director, without further notice to the alien, shall cause a set of Forms I-94 to be prepared evidencing the nonimmigrant classification to which the alien has been adjusted. Form I-94A shall be delivered to the alien. The alien's nonimmigrant status shall be for such time, under such conditions, and subject to such regulations as are applicable to the particular nonimmigrant status created and shall be subject to such other terms and conditions, including the exaction of bonds, as the district director may deem appropriate.

§ 247.13 *Disposition of Form I-508.* If Form I-508 is executed and filed, the duplicate copy thereof shall be filed in the office of the Assistant Commissioner, Examinations Division, and may be made available for inspection by any interested officer or agency of the United States.

§ 247.14 *Surrender of documents.* An alien whose status as a permanent resident has been adjusted to that of a nonimmigrant in accordance with section 247 of the act and this part, shall, upon demand, promptly surrender to the district director having administrative jurisdiction over the office in which the action under this part was taken any documents (such as Form I-151 or any other form of alien-registration receipt card, immigrant identification card, resident alien's border-crossing identification card (Form I-187), certificate of registry, or certificate of lawful entry) in his possession evidencing his former permanent resident status.

IMMIGRATION AND NATIONALITY ACT

Page 407

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

Sec.

248.1 Scope of part.
248.2 Application.
248.3 Change of nonimmigrant classification to that under section 101 (a) (15) (H) of the Immigration and Nationality Act.

§ 248.1 *Scope of part.* Any alien lawfully admitted to the United States as a nonimmigrant (including an alien who acquired such status pursuant to section 247 of the act) who is continuing to maintain his nonimmigrant status, may apply to have his nonimmigrant classification changed to any other nonimmigrant classification for which he may be qualified. This section shall not apply to an alien classified as a nonimmigrant under section 101 (a) (15) (D) of the act, or to an alien classified as a nonimmigrant under section 101 (a) (15) (C) who is within the purview of section 238 (d) of that act. Any eligible alien classified as a nonimmigrant under section 101 (a) (15) (C) may apply only for a change to a classification under paragraphs (15) (A) or (15) (G) of section 101 (a) of the act.

§ 248.2 *Application.* Application for change of nonimmigrant classification shall be made on Form I-506. If the application is granted, the alien's nonimmigrant status under such reclassification shall be subject to the terms and conditions applicable generally to such classification and to such other additional terms and conditions, including exaction of bond, which the district director deems appropriate to the case, and the district director shall cause a new set of Forms I-94 to be prepared and Form I-94A delivered to the applicant. The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter (page 291).

§ 248.3 *Change of nonimmigrant classification to that under section 101 (a) (15) (H) of the Immigration and Nationality Act.* Notwithstanding any other provisions of this part, an application on Form I-506 for a change of an alien's nonimmigrant classification to that described in section 101 (a) (15) (H) of the act shall be accompanied by an application on Form I-129B made by the alien's prospective employer or trainer.

SUPPLEMENT

Page 410

PART 249—CREATION OF RECORD OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

Sec.

- 249.1 Scope of part.
- 249.2 Application.
- 249.3 Delivery of Form I-151.
- 249.16 Disposition of case.
- 101.1 New Part.

§ 249.1 *Application.* Any alien who believes that he meets the eligibility requirements enumerated in section 249 of the act shall apply on Form N-105 to the district director having jurisdiction over his place of residence. The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter (page 291). If the application is granted, a Form I-151, showing that the applicant has acquired the status of an alien lawfully admitted for permanent residence, shall not be issued until the applicant surrenders any other document in his possession evidencing compliance with the alien registration requirements of former or existing law.

§ 249.2 *Application.* An application under this part shall be made on Form N-105. The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor and of his right to appeal within 10 days from the receipt of such notification in accordance with Part 7 of this chapter.

§ 249.3 *Delivery of Form I-151.* If the application is granted, a Form I-151, showing that the applicant has acquired the status of an alien lawfully admitted for permanent residence, shall be issued to the applicant. If the alien is in possession of any other document evidencing compliance with the Alien Registration Act, 1940, or Chapter 7 of Title II of the Immigration and Nationality Act, he shall be required to surrender it.

§ 249.16 *Disposition of case—(a) Record, recommendation and review.* Upon completion of the examination, the immigration officer shall prepare a report of his findings on Form N-125 as to each of the essential facts prescribed by section 249 of the Immigration and Nationality Act and § 249.11, together with his recommendation. Upon completion of Form N-125 by the immigration officer, the entire record shall be transmitted to the district director having administrative jurisdiction over the office in which the examination was conducted. The district director shall approve or disapprove the recom-

IMMIGRATION AND NATIONALITY ACT

mendation of the immigration officer and shall note and sign Form N-125 in accordance with his decision.

PART 101—PRESUMPTION OF LAWFUL ADMISSION

§ 101.1 *Presumption of lawful admission.* A member of the following classes shall be presumed to have been lawfully admitted for permanent residence even though a record of his admission cannot be found, except as otherwise provided in this section, unless he abandoned his lawful permanent resident status or subsequently lost that status by operation of law:

(a) *Prior to June 30, 1906.* An alien who establishes that he entered the United States prior to June 30, 1906.

(b) *United States land borders.* An alien who establishes that, while a citizen of Canada or Newfoundland, he entered the United States across the Canadian border prior to October 1, 1906; an alien who establishes that while a citizen of Mexico he entered the United States across the Mexican border prior to July 1, 1908; an alien who establishes that, while a citizen of Mexico, he entered the United States at the port of Presidio, Texas, prior to October 21, 1918; and an alien for whom a record of his actual admission to the United States does not exist but who establishes that he gained admission to the United States prior to July 1, 1924, pursuant to preexamination at a United States immigration station in Canada and that a record of such preexamination exists.

(c) *Virgin Islands.* An alien who establishes that he entered the Virgin Islands of the United States prior to July 1, 1938, even though a record of his admission prior to that date exists as a non-immigrant under the Immigration Act of 1924.

(d) *Asiatic barred zone.* An alien who establishes that he is of a race indigenous to, and a native of a country within, the Asiatic zone defined in section 3 of the Act of February 5, 1917, as amended, that he was a member of a class of aliens exempted from exclusion by the provisions of that section, and that he entered the United States prior to July 1, 1924, provided that a record of his admission exists.

(e) *Chinese and Japanese aliens*—(1) *Prior to July 1, 1924.* A Chinese alien for whom there exists a record of his admission to the United States prior to July 1, 1924, under the laws and regulations formerly applicable to Chinese and who establishes that at the time of his admission he was a merchant, teacher, or student, and his son or daughter under 21 or wife accompanying or following to join him; a traveler for curiosity or pleasure and his accompanying son or daughter under 21 or accompanying wife; a wife of a United States

SUPPLEMENT

citizen; a returning laborer; and a person erroneously admitted as a United States citizen under section 1993 of the Revised Statutes of the United States, as amended, his father not having resided in the United States prior to his birth.

(2) *On or after July 1, 1924.* A Chinese alien for whom there exists a record of his admission to the United States as a member of one of the following classes, and who establishes that he was, at that time, an alien readmitted between July 1, 1924, and December 16, 1943, inclusive, as a returning Chinese laborer who acquired lawful permanent residence prior to July 1, 1924; a person erroneously admitted between July 1, 1924, and June 6, 1927, inclusive, as a United States citizen under section 1993 of the Revised Statutes of the United States, as amended, his father not having resided in the United States prior to his birth; an alien admitted at any time after June 30, 1924, under section 4 (b) or (d) of the Immigration Act of 1924; an alien wife admitted between June 13, 1930, and December 16, 1943, inclusive, and after August 9, 1946, under section 4 (a) of the Immigration Act of 1924; an alien admitted on or after December 17, 1943, under section 4 (f) of the Immigration Act of 1924; an alien admitted on or after December 17, 1943, under section 317 (c) of the Nationality Act of 1940, as amended; an alien admitted on or after December 17, 1943, as a preference or nonpreference quota immigrant pursuant to section 2 of that act; and a Chinese or Japanese alien admitted to the United States between July 1, 1924, and December 23, 1952, both dates inclusive, as the wife or minor son or daughter of a treaty merchant admitted before July 1, 1924, if the husband-father was lawfully admitted to the United States as a treaty merchant before July 1, 1924, or, while maintaining another status under which he was admitted before that date, had his status changed to that of a treaty merchant or treaty trader after that date, and was maintaining the changed status at the time his wife or minor son or daughter entered the United States.

(f) *Citizens of the Philippine Islands*—(1) *Entry prior to May 1, 1934.* An alien who establishes that he entered the United States prior to May 1, 1934, and that he was on the date of his entry a citizen of the Philippine Islands, provided that for the purpose of petitioning for naturalization he shall not be regarded as having been lawfully admitted for permanent residence unless he was a citizen of the Commonwealth of the Philippines on July 2, 1946.

(2) *Entry between May 1, 1934, and July 3, 1946.* An alien who establishes that he entered Hawaii between May 1, 1934, and July 3, 1946, inclusive, under the provisions of the last sentence of section 8 (a) (1) of the Act of March 24, 1934, as amended, that he was a

IMMIGRATION AND NATIONALITY ACT

on Form I-202. Upon issuance of the authorization, or as soon thereafter as practicable, the alien may be removed from the United States at government expense.

Pages 415 and 632

PART 251—ARRIVAL MANIFESTS AND LISTS: SUPPORTING DOCUMENTS

Sec.

- 251.1 Arrival manifests and lists.
- 251.2 Notification of illegal landings.
- 251.3 Notification of changes in crew.
- 251.4 Notification of changes in employment (aircraft).

§ 251.1 *Arrival manifests and lists*—(a) *Presentation*. The master or agent of every vessel arriving in the United States from a foreign port, from an outlying possession of the United States, or from Hawaii, Guam, Puerto Rico, or the Virgin Islands of the United States shall present to the immigration officer at the port of first arrival a manifest of all crewmen on board on Form I-418 in accordance with the instructions contained thereon. A manifest shall not be required for crewmen aboard a vessel of United States, Canadian, or British registry engaged solely in traffic on the Great Lakes, or the St. Lawrence River, and connecting waterways herewith designated as a Great Lakes vessel, except crewmen of other than United States, Canadian, or British citizenship and, after submission of a manifest on the first voyage of a calendar year, a manifest shall not be required on subsequent arrivals unless there is employed on the vessel at the time of such arrival an alien crewman of other than United States, British, or Canadian citizenship who was not aboard and listed on the occasion of the submission of the last prior manifest. The master or agent of every aircraft arriving in the United States shall present to the immigration officer at the port of first arrival a manifest on Customs Form 7507 of all crewmen on board, except that a manifest shall not be required of an aircraft arriving in the continental United States or Alaska directly from Canada on a flight originating in that country.

(b) *Additional documents*. The master or agent of every vessel or aircraft arriving in the United States from a foreign port, from an outlying possession of the United States, or from Hawaii, Guam, Puerto Rico, or the Virgin Islands of the United States shall prepare as a part of the manifest when one is required for presentation to the immigration officer, a completely executed set of Forms I-95 for each alien crewman on board, except (1) an alien immigrant crewman in possession of a valid immigrant visa, reentry permit, or alien registration receipt card on Form I-151; (2) a Canadian or British citizen

SUPPLEMENT

crewman serving on a vessel plying solely between Canada and the United States; or (3) a crewman seeking conditional landing privileges under section 252 (a) (1) of the act who is in possession of an unmutilated alien crewman landing permit and identification card (Form I-184) or an unmutilated conditional landing permit (Form I-95) with space for additional endorsements previously issued to him as a member of the crew of the same vessel or an aircraft of the same line on his last prior arrival in the United States, following which he departed from the United States as a member of the crew of the same vessel or an aircraft of the same line.

§ 251.2 *Notification of illegal landings.* As soon as discovered, the master or agent of any vessel from which an alien crewman has illegally landed or deserted in the United States shall inform the immigration officer in charge of the port where the illegal landing or desertion occurred, in writing, of the name, nationality, passport number and, if known, the personal description, circumstances and time of such illegal landing or desertion of such alien crewman, and any other information and documents which might aid in his apprehension, including when available a photograph of the crewman. Failure to file notice of illegal landing or desertion within twenty-four hours of the time such landing or desertion becomes known shall be regarded as lack of compliance with section 251 (d) of the act.

§ 251.3 *Notification of changes in crew—(a) Added crewmen.* The master or agent of every vessel departing from the United States shall submit to the immigration officer at the port from which such vessel is to depart directly to a foreign port or place a list on Form I-418 of the alien crewmen on board, other than lawfully admitted permanent residents of the United States, who were not members of the crew and manifested as such on the occasion of the vessel's arrival in the United States. Such list of names shall be headed by the legend "Added Crewmen—Arrival Crewlist filed at _____," and there shall be attached to such list the nonimmigrant form given to the alien on the occasion of his last arrival in the United States, if such form is available; otherwise, a newly executed Form I-95 shall be prepared by the master or agent for attachment to the list.

(b) Separated crewmen. The master or agent of every vessel departing from the United States shall submit to the immigration officer at the port from which such vessel is to depart directly to a foreign port or place a list on Form I-418 of the alien crewmen, other than alien permanent residents of the United States, who were members of the crew and manifested as such on the occasion of the vessel's arrival in the United States who are not departing with the vessel. Such list of names shall be headed by the legend "Separated Crew-

IMMIGRATION AND NATIONALITY ACT

men—Arrival Crewlist filed at _____," and shall contain, in addition, the nationality, passport number, and port of separation of each such crewman as well as the reason for separation. The lists required by paragraph (a) of this section and this paragraph may be incorporated in a single Form I-418, if space permits; the required lists need not be submitted for Canadian or British citizen crewmen of Great Lakes vessels.

(c) *No changes in crew.* When there are no added and separated crewmen as described in this section, the master or agent of every vessel departing from the United States shall submit to the immigration officer at the port from which such vessel is to depart directly to a foreign port or place an executed Form I-418 bearing the notation "Arrival crewlist filed at _____. No changes in nonresident alien crew upon departure."

§ 251.4 *Notification of changes in employment (aircraft).* The agent of the air transportation line shall immediately notify in writing the nearest immigration office of the termination of employment in the United States of each alien crewman employee of the line, furnishing the name, birthdate, birthplace, nationality, passport number and other available information concerning such alien crewman.

Page 417

PART 251—CREW LISTS: GREAT LAKES VESSELS AND AIRCRAFT

Paragraph (c) of § 251.32, *Arrival crew lists for Great Lakes vessels*, is amended to read as follows

(c) *Preparation of Forms I-95.* Except as otherwise provided in this paragraph, the persons responsible for the delivery of the alien crew list and as a part thereof shall prepare a set of Forms I-95 for each arrival in the United States of an alien crewman on board a Great Lakes vessel and shall deliver them to such crewman for presentation by him, with any Foreign Service Forms 256 or 257 or immigration Forms I-132 or I-151 in his possession, to the United States immigration officer at the first port of arrival in the United States. If the crewman for whom a set of Forms I-95 is prepared has an immigrant or nonimmigrant visa, the visa number shall be noted on all copies of the Forms I-95 in the box entitled "Visa or Alien Registration number." If he is a returning resident alien crewman, his alien registration receipt number shall be noted on all copies of the Forms I-95 in the box entitled "Visa or Alien Registration number." A set of Forms I-95 need not be prepared for an alien crewman of a Great Lakes vessel seeking the landing privilege under section 252, (a) (1), of the Immigration and Nationality Act if he is in pos-

SUPPLEMENT

session of a Form I-95A, less than one year old, previously issued to him for landing under that section of the act as a crewman of a Great Lakes vessel.

Sections 251.33 and 251.34 are amended to read as follows:

§ 251.33 *Arrival crew lists for aircraft.* The lists required by section 251 (a) of the Immigration and Nationality Act and § 251.3 shall be submitted on Customs Form 7507 in the space provided for the listing of the crew, shall contain the information indicated on the form, and shall be delivered to the immigration officer inspecting the aircraft at the international airport or other place of first landing in the United States. Except as otherwise provided in this section for aircraft making voyages to and from the United States at regular or periodic intervals and returning resident alien crewman, the persons responsible for the delivery of the alien crew list and as a part thereof shall prepare a set of Forms I-95 for each arrival in the United States of an alien crewman on board the aircraft and shall deliver them to such crewman for presentation by him, with any Foreign Service Forms 256, 257 or immigration Forms I-132 or I-151 in his possession, to the United States immigration officer at the first airport of arrival in the United States. If the crewman for whom a set of Forms I-95 is prepared has an immigrant or nonimmigrant visa, the visa number shall be noted on all copies of the Form I-95 in the box entitled "Visa or Alien Registration number." If he is a returning resident alien crewman, his alien registration receipt number shall be noted on all copies of Form I-95 in the box entitled "Visa or Alien Registration number." In the case of an aircraft making flights to the United States at regular or periodic intervals, a set of Forms I-95 need not be prepared for an alien crewman if he is in possession of a Form I-95A, less than one year old, previously issued to him, and, if other than a returning resident alien, he is arriving on an aircraft of the same transportation line shown on such form and has not arrived in the United States as a crewman on an aircraft of any other transportation line since such form was issued to him.

§ 251.34 *Arrival crew list for certain aircraft not required.* Aircraft coming directly to the continental United States or Alaska on a trip which originated in Canada or the French islands of St. Pierre or Miquelon shall not be regarded as arriving in the United States from any place outside the United States for the purposes of section 251 (a) of the Immigration and Nationality Act and § 251.3, and the provisions of those sections and of § 251.33 shall not apply to such aircraft. Nothing in this section shall be regarded as exempting any crewman from any of the applicable documentary requirements of the Immigration and Nationality Act or of this chapter.

IMMIGRATION AND NATIONALITY ACT

Except as otherwise provided in this section, a set of Forms I-95 shall be prepared for each arrival in the United States of an alien crewman aboard an aircraft within the scope of this section. A set of Forms I-95 need not be prepared for such alien crewman if he is in possession of a Form I-95A, less than one year old, previously issued to him, and, if other than a returning resident alien, he is arriving on an aircraft of the same transportation line shown on such form and has not arrived in the United States as a crewman on an aircraft of any other transportation line since such form was issued to him.

The fourth sentence of § 251.36 *Listing of change in crew of vessel or aircraft* is amended by deleting the words "Assistant Commissioner, Inspections and Examinations Division," and inserting in lieu thereof the words "regional commissioner."

Pages 420 and 633

PART 252—LANDING OF ALIEN CREWMEN

Sec.

- 252.1 Examination of crewmen.
- 252.2 Revocation of conditional landing permits; deportation.
- 252.3 Great Lakes vessels; special procedures.

§ 252.1 *Examination of crewmen*—(a) *Detention prior to examination.* All persons employed in any capacity on board any vessel or aircraft arriving in the United States shall be detained on board the vessel or at the airport of arrival by the master or agent of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service.

(b) *Classes of aliens subject to examination under this part.* The examination of every alien crewman arriving in the United States shall be in accordance with this part and not otherwise except that the following classes of persons employed on vessels or aircraft shall be examined in accordance with the provisions of Parts 235, 236, and 237 of this chapter: (1) Aliens in possession of an immigrant visa, reentry permit, or a Form I-151 alien registration receipt card, applying for admission as immigrants; (2) Canadian or British citizen crewmen of Great Lakes vessels; or (3) Canadian or British citizen crewmen of aircraft arriving directly in Alaska or the continental United States on flights originating in Canada.

(c) *Requirements for admission.* Every alien crewman applying for landing privileges in the United States must make his application in person before an immigration officer, present whatever documents are required, and establish to the satisfaction of the immigration officer that he is not subject to exclusion under any provision of law

SUPPLEMENT

and is entitled clearly and beyond doubt to landing privileges in the United States.

(d) *Authorization to land.* The examining immigration officer in his discretion may grant an alien crewman authorization to land temporarily in the United States for (1) shore leave purposes during the period of time the vessel or aircraft is in the port of arrival or other ports in the United States to which it proceeds directly without touching at a foreign port or place, not exceeding twenty-nine days in the aggregate, if the immigration officer is satisfied that the crewman intends to depart on the vessel on which he arrived or on another aircraft of the same transportation line, or (2) the purpose of obtaining employment and departing from the United States on another vessel than the one on which he arrived, within a period of twenty-nine days, if the immigration officer is satisfied that the crewman intends to depart in that manner and that he is apparently able to obtain such other employment and the immigration officer has consented to the pay off or discharge of the crewman from the vessel on which he arrived.

(e) *Conditional permits to land.* The examining immigration officer shall give to each alien nonimmigrant crewman permitted to land temporarily a copy of the Form I-95 presented by the crewman, endorsed to show the date and place of admission and the type of conditional landing permitted.

(f) *Change of status.* An alien nonimmigrant crewman landed pursuant to the provisions of this part shall be ineligible for any extension of stay or for a change of nonimmigrant classification under Part 248 of this chapter. A crewman admitted under paragraph (d) (1) of this section may, if still maintaining status, apply for a conditional landing permit under paragraph (d) (2) of this section. If the application is approved, he shall be given a copy of a new Form I-95 endorsed to show landing authorized under paragraph (d) (2) of this section for the period necessary to accomplish his scheduled reshipment, which shall not exceed 29 days from the date of his landing, upon surrendering any conditional landing permit previously issued to him on Form I-95.

§ 252.2 *Revocation of conditional landing permits; deportation.* An alien permitted to land conditionally under § 252.1 (d) (1) may, within the period of time for which he was permitted to land, be taken into custody by any immigration officer without a warrant of arrest and be transferred to the vessel upon which he arrived in the United States, if such vessel is in any port of the United States and has not been in a foreign port or place since the crewman was issued his conditional landing permit, upon a determination by the immigration

IMMIGRATION AND NATIONALITY ACT

officer that the alien crewman is not a bona fide crewman or that he does not intend to depart on the vessel on which he arrived in the United States. The conditional landing permit of such an alien crewman shall be taken up and revoked by the immigration officer and a notice to detain and deport such alien crewman shall be served on the master of the vessel on Form I-259. On the written request of the master of the vessel, the crewman may be detained and deported, both at the expense of the transportation line on whose vessel he arrived in the United States, other than on the vessel on which he arrived in the United States, if detention or deportation on such latter vessel is impractical.

§ 252.3 *Great Lakes vessels; special procedures.* An immigration examination shall not be required of any crewman aboard a Great Lakes vessel arriving at a port of the United States for a period of less than twenty-four hours, who (a) has previously been examined by an immigration officer as a member of the crew of the same vessel and (b) is either a British or Canadian citizen or is in possession of a Form I-95 previously issued to him as a member of the crew of the same vessel during the same calendar year, and (c) does not request or require landing privileges in the United States during the time the vessel will be in ports of the United States before returning to Canada.

Page 429

PART 253—PAROLE OF ALIEN CREWMEN

Sec.

253.1 Parole.

253.2 Termination of parole.

§ 253.1 *Parole—(a) Afflicted crewmen.* Any alien crewman afflicted with feeble-mindedness, insanity, epilepsy, tuberculosis in any form, leprosy, or any dangerous contagious disease, or an alien crewman suspected of being so afflicted shall, upon arrival at the first port of call in the United States, be paroled to the medical institution designated by the district director in whose district the port is located, in the custody (other than during the period of time he is in such medical institution) of the agent of the vessel or aircraft on which such alien arrived in the United States and at the expense of the transportation line for a period initially not to exceed thirty days, for treatment and observation, under the provisions of section 212 (d) (5) of the act. Unless the Public Health Surgeon at the first port certifies that such parole be effected immediately for emergent reasons, the district director may defer execution of parole to a subsequent port of the United States to which the vessel or aircraft will proceed, if facilities not readily available at the first port are readily

SUPPLEMENT

available at such subsequent port of call. Notice to remove an afflicted alien crewman shall be served by the examining immigration officer upon the master or agent of the vessel or aircraft on Form I-259 and shall specify the date when and the place to which such alien crewman shall be removed and the reasons therefor.

(b) *Disabled crewman.* Any alien crewman who becomes disabled in any port of the United States, whom the master or agent of the vessel or aircraft is obliged under foreign law to return to another country, may be paroled into the United States under the provisions of section 212 (d) (5) of the act for the period of time and under the conditions set by the district director in whose district the port is located, in the custody of the agent of the vessel or aircraft for the purpose of passing through the United States and transferring to another vessel or aircraft for departure to such foreign country, by the most direct and expeditious route.

(c) *Shipwrecked or castaway seamen or airmen.* A shipwrecked or castaway alien seaman or airman who is rescued by or transferred at sea to a vessel or aircraft destined directly for the United States and who is brought to the United States on such vessel or aircraft other than as a member of its crew shall be paroled into the United States under the provisions of section 212 (d) (5) of the act for the period of time and under the conditions set by the district director in whose district the port is located, in the custody of the appropriate foreign consul or the agent of the aircraft or vessel which was wrecked or from which such seaman or airman was removed, for the purpose of treatment or observation in a hospital, if such is required, and for departure to the appropriate foreign country by the most direct and expeditious route.

(d) *Crewman denied conditional landing permit.* Any alien crewman denied a conditional landing permit or whose conditional landing permit issued under § 252.1 (d) (1) is revoked may, upon the request of the master or agent, be paroled into the United States under section 212 (d) (5) of the act in the custody of the agent of the vessel or aircraft and at the expense of the transportation line for medical treatment or observation or for other reasons deemed strictly in the public interest.

§ 253.2 *Termination of parole.* At the termination of the period of the parole specified in § 253.1, or when the purpose of the parole specified therein has been served, the alien crewman, if in the United States, shall be returned to the custody from which he was paroled and his case dealt with in the same manner as any other applicant for a conditional landing permit.

IMMIGRATION AND NATIONALITY ACT

Pages 434 and 634

PART 263—REGISTRATION OF ALIENS IN THE UNITED STATES:
PROVISIONS GOVERNING SPECIAL GROUPS

Sec.

- 263.1 Foreign government officials, representatives to international organizations and similar classes.
- 263.2 Certain Canadian citizens and British subjects; agricultural workers.
- 263.3 Aliens under deportation proceedings or confined in institutions within the United States.

§ 263.1 *Foreign government officials, representatives to international organizations and similar classes*—(a) *Registration not required.* Any alien in the United States on the effective date of the Immigration and Nationality Act shall not be required to register under section 262 of the Immigration and Nationality Act if (1) on that date he was exempt from the requirements of the Alien Registration Act, 1940 under the regulations promulgated under that act (12 F. R. 5130), and (2) he were now outside the United States applying for a visa in the status and classification he presently is maintaining in the United States, he would be exempt from the registration requirements of section 262 of the Immigration and Nationality Act under the regulations promulgated by the Department of State in accordance with the authority contained in section 221 (b) of the Immigration and Nationality Act.

(b) *Registration required.* Any person exempt from the registration requirements of section 262 of the Immigration and Nationality Act who remains in the United States for 30 days or longer after having ceased to be within the classification which entitled him to the exemption, shall apply for registration in accordance with the provisions of the Immigration and Nationality Act before the expiration of 30 days following the date when he ceased to be entitled to such classification.

§ 263.2 *Other nonimmigrant aliens; fingerprint waiver.* The requirement of fingerprinting specified in section 262 of the act is waived on a basis of reciprocity in the case of every nonimmigrant alien who departs from the United States within one year of admission, provided he maintains his nonimmigrant status during that time. Every nonimmigrant alien not previously fingerprinted shall apply for fingerprinting at once if he remains in the United States in excess of one year, or if he fails to maintain his nonimmigrant status, except as a longer time is permitted for a foreign government official or representative under § 263.1, including a person holding a diplomatic passport visaed as an official, and a nonimmigrant with the classification of NATO-1, NATO-2, NATO-3, and NATO-4.

SUPPLEMENT

§ 263.3 *Aliens under deportation proceedings or confined in institutions within the United States*—(a) *Under deportation proceedings*. The fingerprinting of an alien under deportation proceedings commenced pursuant to Part 242 of this chapter shall be regarded as registration under section 262 of the Immigration and Nationality Act during the pendency of such proceedings. Pending completion of the deportation proceedings, the copy of the order to show cause served on the alien, endorsed to show that he has been fingerprinted, shall constitute the evidence of registration required to be carried with him and in his personal possession by section 264 of the Immigration and Nationality Act.

(b) *Aliens confined in penal or other institutions or who are incapacitated*. The district director in his discretion shall make such special arrangements as he deems necessary for the registration of aliens confined in institutions within his district.

Page 436

PART 264—REGISTRATION OF ALIENS IN THE UNITED STATES: FORMS AND PROCEDURE

Sec.

- 264.1 Alien registration receipt card.
- 264.2 Registration officers.
- 264.3 Place of registration.
- 264.4 Registration records confidential.
- 264.5 Replacement of alien-registration receipt cards; aliens lawfully admitted for permanent residence.
- 264.11 Form of registration.
- 264.12 Manner of registration.

§ 264.1 *Alien registration receipt card*—(a) *Receipt cards or other evidence of alien registration issued prior to the effective date of the Immigration and Nationality Act*. Every receipt card, certificate, or other document or paper which was issued to any registered alien prior to the effective date of the Immigration and Nationality Act and which, under any regulation in effect immediately prior to the effective date of the Immigration and Nationality Act was or constituted evidence of alien registration under any of the provisions of Title III of the Alien Registration Act, 1940, is hereby declared to be issued and is hereby issued as an alien registration receipt card pursuant to section 264 (d) of the Immigration and Nationality Act with the same force and effect as though issued on or after the effective date of the Immigration and Nationality Act. Such evidence of alien registration includes:

Form AR 103: "Alien Registration Receipt Card"

Form AR-3: "Alien Registration Receipt Card."

IMMIGRATION AND NATIONALITY ACT

Form I-151: "Alien Registration Receipt Card."

Form AR-103 S: "Alien Registration Receipt Card" (Seamen Form).

Form I-151 (Rev. 1-3-50): (Certifying to Alien Registration.)

Foreign Service Form 257a: Showing Alien Registration.

Form I-200: (Noted to show alien registration, but only during the pendency of the deportation proceedings.)

Form I-94C: (Noted to show alien registration.)

Form I-100a: Alien Laborer's Permit and Identification Card.

(b) *Aliens registered prior to effective date of the Immigration and Nationality Act who have not received evidence of registration.* Except as otherwise provided in this part, any alien in the United States who was registered under Title III of the Alien Registration Act, 1940, who for any reason has not been issued an alien registration receipt card or in whose case such card remains undelivered, shall be furnished with an alien registration receipt card on the appropriate form prescribed in this part as soon as practicable. If the identity of any such alien or the mailing address is unknown, such action shall be initiated upon the receipt of that information from any source.

(c) *Forms constituting alien registration receipt cards under the Immigration and Nationality Act.* In addition to any form specifically stated elsewhere in this chapter to be an alien registration receipt card issued pursuant to section 264 (d) of the Immigration and Nationality Act, the forms listed in this paragraph shall, under the conditions specified, also constitute alien registration receipt cards.

(1) *Form I-151.* Form I-151 shall be issued as an alien-registration receipt card and as evidence of lawful admission for permanent residence to an alien who is lawfully admitted to the United States as an immigrant with an unexpired immigrant visa; who in any manner becomes a lawful permanent resident of the United States and is registered in the United States; or who was lawfully admitted for permanent residence and reregisters in the United States within 30 days after attaining his fourteenth birthday anniversary, if the Form I-151 originally issued to him does not contain his photograph.

(3) *Form I-94A.* Except as otherwise provided in this part, an alien registered on Form AR-2 and, when applicable, AR-4 as provided in § 264.11 shall be given Form I-94A endorsed to show such registration and that form shall be the alien's registration receipt card.

SUPPLEMENT

(4) *Order to show cause.* Pending completion of the deportation proceedings, the alien's copy of the order to show cause served on him shall be regarded as an alien-registration receipt card.

(d) *Prohibition against issuance of more than one alien registration receipt card; requirement of surrender of receipt card.* An alien registration receipt card shall not be issued to any person who previously has obtained one unless he surrenders such previously issued card which is in his possession. No person shall use an alien registration receipt card relating to any other person except in behalf of his minor child or ward. If an alien is naturalized, dies, permanently departs, or is deported from the United States, or an alien registration receipt card is found by a person other than the one to whom it was issued, the person in possession of the card shall surrender it to an immigration officer or it shall be lifted by an immigration officer, and such officer shall forward the card to the office of the Service maintaining the file of the alien to whom the card was issued. If doubt arises as to the location of the alien's file, the alien registration receipt card shall be forwarded to the Central Office for appropriate disposition.

(e) *Carrying and possession of proof of alien registration.* The provisions of section 264 (e) of the Immigration and Nationality Act shall be applicable to every receipt card, certificate, or other document or paper referred to in this section as constituting evidence of alien registration.

(f) *Limited effect of issuance of alien registration receipt card.* The issuance of an alien registration receipt card or its equivalent shall not relieve the alien, or his parent or guardian, from full compliance with any and all laws and regulations of the United States now existing or hereafter made concerning aliens; nor shall it be construed to confer upon the alien or his parent or guardian immunity from any liability, penalty or punishment incurred by the alien or his parent or guardian for violation of any law of the United States occurring either before or after the issuance of such card.

§ 264.2 *Registration officers.* Immigration officers and any officer or employee of the United States selected by the Commissioner are designated registration officers and authorized to register aliens under Chapter 7 of Title II of the Immigration and Nationality Act. Any registration officer may prepare any registration form required to be executed by an alien upon the basis of information furnished by such alien.

§ 264.3 *Place of registration.* Any alien in the United States who is required to apply for registration under the provisions of section 262 of the Immigration and Nationality Act shall do so at any office

IMMIGRATION AND NATIONALITY ACT

in which any person designated in § 264.2 as a registration officer is serving as such, except as otherwise indicated in § 263.3 of this chapter, and except that the district director may make such special arrangements as he deems necessary for the registration of aliens in his district who are aged, infirm, or incapacitated.

§ 264.4 *Registration records confidential.* All registration and fingerprint records made under the provisions of Title III of the Alien Registration Act, 1940, or under Chapter 7 of Title II of the Immigration and Nationality Act shall be confidential. Information from such records shall be made available only to such persons or agencies as may be designated by the Commissioner. Persons or agencies designated to receive such information prior to the effective date of the Act whose designation was outstanding and unrevoked upon that date are hereby designated to continue to receive such information under the authority contained in section 264 (b) of the Immigration and Nationality Act.

§ 264.5 *Replacement of alien registration receipt cards.* Any alien in the United States whose alien registration receipt card has been lost, mutilated, or destroyed, shall immediately apply for a new alien registration receipt card on Form I-90. Any alien lawfully in the United States for permanent residence whose name has been legally changed after registration or who is not in possession of Form I-151 may also apply on Form I-90 for a new alien registration receipt card. No appeal shall lie from the decision of the officer denying the application.

§ 264.11 *Form of registration.* Any alien required to be registered in the United States shall, except as otherwise provided in this chapter, be registered on Form AR-2 and, where necessary, Form AR-2a. Except as provided in § 263.3 (a) of this chapter, the alien shall be fingerprinted on Form AR-4 and when the alien is registered on Form AR-2, the registration officer shall take an imprint of the alien's right index finger in the space provided therefor on Form AR-2.

§ 264.12 *Manner of registration—(a) Duties of registration officers.* The registration officer shall complete the registration forms prescribed by this part in the English language from the information furnished by the alien and all fingerprints shall be taken by such officer. When an alien other than a lawful permanent resident is registered on Form AR-2, the registration officer shall issue Form I-94A or I-95A to the alien and shall endorse such form to show that he has registered under the act.

SUPPLEMENT

(b) *Information required for registration.* The information which the alien or his parent or legal guardian must furnish under oath shall be such as is required by the forms prescribed in this part or as may be required hereafter under the authority of the Immigration and Nationality Act. Name or names shall be given in the English alphabet and the date of birth shall be stated by giving the month, day and year in that sequence.

(c) *Persons who believe themselves not subject to registration.* If any person indicates to the registration officer that he does not believe himself subject to registration under the Immigration and Nationality Act but is registering for his own protection, the registration officer shall make the following notation on the margin of the registration form at the conclusion of the registration: "Applicant doubts need for registration."

(d) *Registration in behalf of insane or incompetent aliens.* Any alien who is insane or otherwise incompetent or of unsound mind may be registered by his legal guardian, trustee, or committee or by such other person as may be charged by law with his care and custody. Any person registering in behalf of an alien herein described, shall answer to the best of his knowledge and ability the questions required to be put to the registering alien and shall swear or affirm to the best of his knowledge and belief that such alien is incompetent. Such alien, if 14 years of age or older, shall be fingerprinted if possible.

(e) *Signing of registration forms.* Except as otherwise provided in this part the registration forms provided for herein must be signed and sworn to before a registration officer by the alien in person or by his parent or legal guardian. The alien being registered or his parent or guardian or the person furnishing the information in behalf of an incompetent alien, if unable to write, shall make his mark in the signature space on the registration forms and his mark shall be witnessed by a witness other than the registration officer. The witness shall sign his name and address on the registration forms near the mark made and the words "witnessed by" shall precede the witness' signature.

IMMIGRATION AND NATIONALITY ACT

Page 441

PART 265—REGISTRATION OF ALIENS IN THE UNITED STATES: NOTICES OF ADDRESS

Sec.

- 265.1 Notices of address.
- 265.11 Form of notification.
- 265.12 Notification in behalf of insane or incompetent aliens.

§ 265.1 *Notices of address.* The notices of address, change of address, and new address required by the act shall be furnished on, and in accordance with, the forms prescribed in this part, which shall be made available without cost at post offices and at offices of the Service in the United States.

§ 265.11 *Form of notification.* The notification of current address required by section 265 of the Immigration and Nationality Act shall be furnished on Form I-53 and shall include the alien's name, residence in the United States, alien registration number, name under which registered, immigration status in the United States, country and date of birth, sex, place and date of entry to the United States, and country of which a subject or citizen. The entry on the form shall be typewritten or printed in ink or with an indelible pencil except that the signature shall be in writing in ink or with an indelible pencil. The card shall not be bent, folded, creased, torn, or mutilated in any manner. The card shall be signed by the alien or his parent or guardian and, upon completion, handed to a postal clerk at any United States post office who will forward it to a designated Immigration and Naturalization Service office. The notification of change of address and new address which is required to be made by section 265 of the Immigration and Nationality Act shall be made by filling out and mailing post card Form AR-11. Form AR-11 shall also be used by an alien residing in the United States pursuant to a lawful temporary admission when reporting his address at the expiration of each three-month period as required by section 265 of the Immigration and Nationality Act.

§ 265.12 *Notification in behalf of insane or incompetent aliens.* The notification of address of an alien who is insane or otherwise incompetent or of unsound mind may be furnished by his legal guardian, trustee, or committee, or by any person who is charged by law with his care and custody.

SUPPLEMENT

Page 442

PART 280—IMPOSITION AND COLLECTION OF FINES

Sec.

- 280.1 Notice of intention to fine; administrative proceedings not exclusive.
- 280.2 Special provisions relating to aircraft.
- 280.3 Departure of vessel or aircraft prior to denial of clearance.
- 280.4 Data concerning cost of transportation.
- 280.5 Mitigation or remission of fines.
- 280.6 Bond to obtain clearance; form.
- 280.7 Approval of bonds or acceptance of cash deposit to obtain clearance.
- 280.11 Notice of intention to fine; procedure.
- 280.12 Answer and request or order for interview.
- 280.13 Disposition of case.
- 280.14 Record.
- 280.15 Notice of final decision to collector of customs.
- 280.21 Seizure of aircraft.
- 280.51 Application for mitigation or remission.

§ 280.1 *Notice of intention to fine; administrative proceedings not exclusive.* Whenever a district director has reason to believe that any person has violated any of the provisions of the Immigration and Nationality Act and has thereby become liable to the imposition of an administrative fine under the Immigration and Nationality Act, he shall cause a Notice of Intention to Fine, Form I-79, to be served as provided in this part. Nothing in this subchapter shall affect, restrict, or prevent the institution of a civil suit, in the discretion of the Attorney General, under the authority contained in section 280 of the Immigration and Nationality Act.

§ 280.2 *Special provisions relating to aircraft.* In any case in which the imposition of a fine is predicated upon an alleged violation of a regulation promulgated under authority of section 239 of the Immigration and Nationality Act, the procedure prescribed in this part shall be followed, and the aircraft involved shall not be granted clearance pending determination of the question of liability to the payment of any fine, or while the fine remains unpaid; but clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine or of a bond with sufficient surety to secure the payment thereof, approved by the collector of customs. If the alleged violation was by the owner or person in command of the aircraft, the penalty provided for shall be a lien against the aircraft, which, except as provided in § 280.21, shall be seized by the district director or by an immigration officer designated by the district director, and placed in the custody of the customs officer who is in charge of the port of entry or customs station nearest the place of seizure. If the owner or owners of the airport at which such aircraft is located are the owners of the seized aircraft, the air-

IMMIGRATION AND NATIONALITY ACT

craft shall be removed to another suitable place for storage if practicable.

§ 280.3 *Departure of vessel or aircraft prior to denial of clearance.* If any vessel or aircraft which is subject to the imposition of a fine shall have departed from the United States prior to the denial of clearance by the collector of customs and such vessel or aircraft is subsequently found in the United States, a Notice of Intention to Fine, Form I-79, shall be served as provided in this part, if such form has not been previously served for the same violation. Clearance of such vessel or aircraft shall be withheld by the collector of customs, and the procedure prescribed in this part shall be followed to the same extent and in the same manner as though the vessel or aircraft had not departed from the United States. Aircraft subject to the provisions of § 280.2, which shall have departed from the United States prior to the time seizure could be effected, shall be subject to all of the provisions of this part, if subsequently found in the United States, to the same extent as though it had not departed from the United States.

§ 280.4 *Data concerning cost of transportation.* Within five days after request therefor, transportation companies shall furnish to the district director pertinent information contained in the original transportation contract of all rejected aliens whose cases are within the purview of any of the provisions of the Immigration and Nationality Act relating to refund of passage monies, and shall specify the exact amounts paid for transportation from the initial point of departure (which point shall be indicated) to the foreign port of embarkation, from the latter to the port of arrival in the United States and from the port of arrival to the inland point of destination, respectively, and also the amount paid for headtax, if any.

§ 280.5 *Mitigation or remission of fines.* In any case in which mitigation or remission of a fine is authorized by the Immigration and Nationality Act, the party served with Notice of Intention to Fine may apply in writing to the district director for such mitigation or remission.

§ 280.6 *Bond to obtain clearance; form.* A bond to obtain clearance of a vessel or aircraft under sections 231, 233, 237, 239, 243, 251, 253, 254, 255, 256, 272, or 273 of the Immigration and Nationality Act shall be filed on Form I-310.

§ 280.7 *Approval of bonds or acceptance of cash deposit to obtain clearance.* The collector of customs is authorized to approve the bond, or accept the sum of money which is being offered for deposit under

SUPPLEMENT

any provision of the Immigration and Nationality Act or by this chapter for the purpose of obtaining clearance of a vessel or aircraft.

§ 280.11 *Notice of intention to fine; procedure.* Notice of Intention to Fine, Form I-79, shall be prepared in triplicate, with one additional copy for each additional person on whom the service of such Notice is contemplated. The Notice shall be addressed to any or all of the available persons subject to fine. A copy of the Notice shall be served on each such person by (a) delivering it to him in person, or (b) leaving it at his office, or (c) mailing it to him at his office whenever the district director ascertains that the other two methods of service are inconvenient or impossible. If the Notice is served personally, the person upon whom it is served shall be requested to acknowledge such service by signing his name to the duplicate and triplicate copies. The officer effecting such service shall attest to the service by signing his name thereon and shall indicate thereon the date and place of service. If the person so served refuses to acknowledge service, or if service is made by leaving it at an office or mailing it, the person making such service shall indicate the method and date on the duplicate and triplicate copies of Form I-79, and shall sign his name upon such copies. The duplicate copy shall be retained by the district director and the triplicate copy shall be delivered directly to the collector of customs for the district in which the vessel or aircraft is located, and the collector shall withhold clearance until deposit is made or bond furnished as provided in the Immigration and Nationality Act. If the vessel or aircraft is located in a customs district which is outside the jurisdiction of the office of the Service having jurisdiction over the matter, the triplicate copy shall be forwarded to the office of the Service nearest such customers district for delivery to the collector of customs.

§ 280.12 *Answer and request or order for interview.* Within 30 days following the service of the Notice of Intention to Fine (which period the district director may extend for an additional period of 30 days upon good cause being shown), any person upon whom a notice under this part has been served may file with the district director a written defense, in duplicate, under oath setting forth the reasons why a fine should not be imposed, or if imposed, why it should be mitigated or remitted if permitted by the Immigration and Nationality Act, and stating whether a personal appearance is desired. Documentary evidence shall be submitted in support of such defense and a brief may be submitted in support of any argument made. If a personal interview is requested, the evidence in opposition to the imposition of the fine and in support of the request for mitigation or remission may be presented at such interview. An interview shall be

IMMIGRATION AND NATIONALITY ACT

conducted if requested by the party as provided hereinabove or, if directed at any time by the Board, the Commissioner, or the district director.

§ 280.13 *Disposition of case*—(a) *Allegations admitted or no answer filed.* If a request for personal appearance is not filed and (1) the answer admits the allegations in the notice, or (2) no answer is filed, the district director shall enter such order in the case as he deems appropriate and no appeal from his decision may be taken.

(b) *Answer filed; personal appearance.* Upon receipt of an answer asserting a defense to the allegations in the notice without requesting a personal appearance, or if a personal appearance is requested or directed, the case shall be assigned to an immigration officer. The immigration officer shall prepare a report summarizing the evidence and containing his findings and recommendation. The record, including the report and recommendation of the immigration officer, shall be forwarded to the district director. The district director shall note on the report of the immigration officer whether he approves or disapproves the recommendation of the immigration officer. The person shall be informed in writing of the decision of the district director and, if his decision is that a fine shall be imposed or that the requested mitigation or remission shall not be granted, of the reasons for such decision. From the decision of the district director an appeal may be taken to the Board within 15 days after the mailing of the notification of decision as provided in Part 3 of this chapter.

§ 280.14 *Record.* The record made under § 280.13 shall include the request for the interview or a reference to the order directing the interview; the medical certificate, if any; a copy of any record of hearing before a Board of Special Inquiry, Hearing Examiner, Hearing Officer, or Special Inquiry Officer which is relevant to the fine proceedings; the duplicate copy of the Notice of Intention to Fine; the evidence upon which such Notice was based; the duplicate of any notices to detain, deport, deliver, or remove aliens; notice to pay expenses; evidence as to whether any deposit was made or bond furnished in accordance with the Immigration and Nationality Act; reports of investigations conducted; documentary evidence and testimony adduced at the interview; the original of any affidavit or brief filed in opposition to the imposition of fine; the application for mitigation or remission; and any other relevant matter.

§ 280.15 *Notice of final decision to collector of customs.* At such time as the decision under this part is final, the regional administrative officer shall be furnished a copy of the decision by the district director. The regional administrative officer shall notify the collector of customs who was furnished a copy of the Notice of Intention to

SUPPLEMENT

Fine of the final decision made in the case. Such notification need not be made if the regional administrative officer has been previously furnished with a notice of collection of the amount of the penalty by the collector of customs.

§ 280.21 *Seizure of aircraft.* Seizure of an aircraft under the authority of section 239 of the Immigration and Nationality Act, and § 280.2 will not be made if such aircraft is damaged to an extent that its value is less than the amount of the fine which may be imposed. Immediately upon the seizure of an aircraft, or prior thereto, if circumstances permit, a full report of the facts in the case shall be submitted by the district director to the United States Attorney for the district in which the seizure was made. The report shall include the cost incurred in seizing and guarding the aircraft and an estimate of the further additional cost likely to be incurred.

§ 280.51 *Application for mitigation or remission*—(a) *When application may be made.* An application for mitigation or remission shall be filed (1) within 30 days after the service of the Notice of Intention to Fine and, if an answer is filed as provided in § 280.12, with such answer, for consideration in the event a fine is found to have been incurred, or (2) within 30 days after receipt of the final decision with respect to the fine.

(b) *Form and contents of application.* An application for mitigation or remission shall be filed in duplicate under oath and shall include information, supported by documentary evidence, as to the basis of the claim to mitigation or remission, and as to the action, if any, which may have been taken by the applicant, or as to the circumstances present in the case which, in the opinion of the applicant, justified the granting of his application.

(c) *Disposition of application.* The application, if filed with the answer, shall be disposed of as provided in § 280.13. In any other case, the application shall be considered and decided by the district director from whose decision an appeal may be taken to the Board within 10 days from receipt of notification of such decision, as provided in Part 6 of this chapter.

Page 446

PART 282—PRINTING OF REENTRY PERMITS: FORMS FOR SALE TO PUBLIC

Sec.

- 282.1 Reentry permits; quality of paper.
- 282.2 Forms printed by the Public Printer.

§ 282.1 *Reentry permits; quality of paper.* Form I-132, Permit to Reenter the United States, shall be printed on distinctive safety

IMMIGRATION AND NATIONALITY ACT

paper. Such permits to enter the United States shall be prepared and issued in accordance with section 223 of the Immigration and Nationality Act and Part 223 of this chapter.

§ 282.2 *Forms printed by the Public Printer.* The Public Printer is authorized to print for sale to the public by the Superintendent of Documents the following forms prescribed by Subchapter B of this chapter: I-20, I-21, I-94, I-95, I-129, I-129A, I-129B, I-131, I-131A, I-133, I-133A, I-418, and I-539.

Page 447

PART 287—FIELD OFFICERS; POWERS AND DUTIES

Sec.

- 287.1 Definitions.
- 287.2 Criminal violations; investigation and action.
- 287.3 Disposition of cases of aliens arrested without warrant.
- 287.4 Subpена.
- 287.5 Power and authority to administer oaths.

§ 287.1 *Definitions*—(a) *Reasonable distance from external boundary.* The phrase “within a reasonable distance from any external boundary of the United States,” as used in section 287 of the Immigration and Nationality Act, means within a distance of not exceeding 100 air miles from any external boundary of the United States or any shorter distance which may be fixed by the district director, or, so far as the power to board and search aircraft is concerned, any distance fixed pursuant to paragraph (b) of this section.

(b) *Reasonable distance; fixing by district directors.* In fixing distances not exceeding 100 air miles pursuant to paragraph (a) of this section, district directors shall take into consideration topography, confluence of arteries of transportation leading from external boundaries, density of population, possible inconvenience to the traveling public, types of conveyances used, and reliable information as to movements of persons effecting illegal entry into the United States: *Provided*, That whenever in the opinion of a district director a distance in his district of more than 100 air miles from any external boundary of the United States would because of unusual circumstances be reasonable, such district director shall forward a complete report with respect to the matter to the Commissioner, who may, if he determines that such action is justified, declare such distance to be reasonable.

(c) *Certain powers of immigration officers.* Any immigration officer is hereby authorized to exercise anywhere in the United States all the powers conferred by section 287 of the Immigration and Nationality Act, including:

SUPPLEMENT

(1) The power to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;

(2) The power to execute warrants and other processes, to arrest without warrant, to board and search vessels and other conveyances without warrant, and to enter private lands within a distance of twenty-five miles of any external boundary of the United States without warrant to prevent the illegal entry of aliens into the United States;

(3) The power to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of the Immigration and Nationality Act and the administration of the Service; and

(4) The power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States.

(d) *Disposition of felony cases.* The cases of persons arrested for felonies under paragraph (4) of section 287 (a) of the Immigration and Nationality Act shall be handled administratively in accordance with the applicable provisions of § 287.2, but in no case shall there be prejudiced the right of the person arrested to be taken without unnecessary delay before another near-by officer empowered to commit persons charged with offenses against the laws of the United States.

(e) *Power to arrest persons who bring in, transport, or harbor certain aliens, or induce them to enter.* Any immigration officer shall have authority to make arrests for violations of any provision of section 274 of the Immigration and Nationality Act.

(f) *Patrolling the border.* The phrase "patrolling the border to prevent the illegal entry of aliens into the United States" as used in section 287 of the Immigration and Nationality Act means conducting such activities as are customary, or reasonable and necessary, to prevent the illegal entry of aliens into the United States.

§ 287.2 *Criminal violations; investigation and action.* Whenever a district director has reason to believe that there has been a violation punishable under any criminal provision of the laws administered or enforced by the Service, he shall cause an investigation to be made immediately of all the pertinent facts and circumstances and shall take or cause to be taken such further action as the results of such investigation warrant.

§ 287.3 *Disposition of cases of aliens arrested without warrant.* An alien arrested without a warrant of arrest under the authority

IMMIGRATION AND NATIONALITY ACT

contained in section 287 (a) (2) of the Immigration and Nationality Act shall be examined as therein provided by an officer other than the arresting officer, unless no other qualified officer is readily available and the taking of the alien before another officer would entail unnecessary delay, in which event the arresting officer, if the conduct of such examination is a part of the duties assigned to him, may examine the alien. If such examining officer is satisfied that there is *prima facie* evidence establishing that the arrested alien was entering or attempting to enter the United States in violation of the immigration laws, he shall refer the case to a special inquiry officer for further inquiry in accordance with Parts 235 and 236 of this chapter or take whatever other action may be appropriate or required under the laws or other regulations applicable to the particular case. If the examining officer is satisfied that there is *prima facie* evidence establishing that the arrested alien is in the United States in violation of the immigration laws, further action in the case shall be taken as provided in Part 242 of this chapter.

§ 287.4 *Subpena*—(a) *Who may issue.* Except as provided in § 335.11 of this chapter, subpenas requiring the attendance of witnesses or the production of documentary evidence, or both, may be issued upon his own volition by a district director or special inquiry officer in any proceeding pending before him, or upon application of an officer of the Service, or upon written application of the alien or other party affected. If an alien or other party affected by a proceeding before the Service requests that a witness be subpeneaed to testify or to produce books, papers or documents in such proceeding before the Service, he shall be required as a condition precedent to the issuance of the subpena to state in writing what he expects to prove by such witness or the books, papers, or documents and to show affirmatively that the proposed evidence is relevant and material and that he has made diligent efforts without success to produce the same. Upon determining that a witness whose evidence is desired either by the Service officer or the alien or other party affected will not appear and testify or produce documentary evidence unless commanded to do so and that the testimony and evidence of such witness is essential, the district director or a special inquiry officer in any proceeding pending before him, shall issue a subpena. If the witness is at a distance of more than 100 miles from the place of hearing, the subpena shall provide for the witness' appearance at the field office nearest to him to respond to oral or written interrogatories, unless the Service indicates that there is no objection to bringing the witness the distance required to enable him to testify in person at the hearing.

SUPPLEMENT

(b) *Form.* Every subpoena issued under the provisions of this section shall state the title of the proceeding and shall command the person to whom it is directed to attend and give testimony at a time and place therein specified. A subpoena may also command the person to whom it is directed to produce the books, papers or documents designated therein. A subpoena may also direct the making of a deposition before an officer of the Service. Subpenas shall be issued on Form I-138.

(c) *Service.* A subpoena issued under this section may be served by any person over 18 years of age not a party to the case designated to make such service by the district director having administrative jurisdiction over the office in which the subpoena is issued. Service of the subpoena shall be made by delivering a copy thereof to the person named therein and by tendering to him the fee for one day's attendance and the mileage allowed by law by the United States District Court for the district in which the testimony is to be taken. When the subpoena is issued on behalf of the Service, fee and mileage need not be tendered at the time of service. A record of such service shall be made and attached to the original copy of the subpoena.

(d) *Invoking aid of court.* If a witness neglects or refuses to appear and testify as directed by the subpoena served upon him in accordance with the provisions of this section, the district director issuing the subpoena shall request the United States Attorney for the proper district to report such neglect or refusal to the appropriate United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the books, papers or documents designated in the subpoena. If the subpoena was issued by a special inquiry officer, he shall request the district director having administrative jurisdiction over him to take the action referred to in the previous sentence in the event the witness neglects or refuses to appear and testify as directed by the subpoena served upon him.

§ 287.5 *Power and authority to administer oaths.* Any immigration officer, or any other employee individually designated by a district director, shall have the power and authority to administer oaths.

IMMIGRATION AND NATIONALITY ACT

Page 449

PART 292—REPRESENTATION AND APPEARANCES

Part 292—*Enrollment and Disbarment of Attorneys and Representatives* is amended to read as follows:

Sec.

- 292.1 Representation of others.
- 292.2 Requests by organizations for recognition.
- 292.3 Suspension or disbarment.
- 292.4 Appearances.
- 292.5 Service upon and action by attorney or representative of record.

§ 292.1 *Representation of others*—(a) *Attorneys in the United States*. Any attorney, as defined in § 1.1f of this chapter, may represent persons before the Service and the Board.

(b) *Reputable individuals*. When a person is entitled to representation, he may be represented by any reputable individual of good moral character who is appearing without remuneration, and files a written declaration to that effect, if such representation is permitted by a regional commissioner, district director, officer in charge, special inquiry officer, the Commissioner, or the Board.

(c) *Accredited representatives*. A person may be represented by an accredited representative of an organization described in § 1.1j of this chapter.

(d) *Accredited officials*. An alien may be represented by an accredited official, in the United States, of the government to which he owes allegiance, if the official appears solely in his official capacity and with the alien's consent.

(e) *Attorneys outside the United States*. An attorney, other than one described in § 1.1f of this chapter, residing outside the United States and licensed to practice law and in good standing in a court of the country in which he resides, and who is engaged in such practice, may be permitted by a regional commissioner, district director, officer in charge, the Commissioner, or the Board to be heard. The regional commissioner and district director are authorized to withhold granting permission to be heard before an officer under their jurisdiction and may refer the request to the Board for its decision.

(f) *Amicus curiae*. A person desiring to be heard as amicus curiae shall apply therefor to the Board. The Board may grant such application if in the public interest to do so.

(g) *Former employees*. A person previously employed by the Department of Justice is not permitted to represent in a case in which he participated during the period of his employment.

SUPPLEMENT

(h) *Persons formerly authorized to practice.* A person, other than a representative of an organization described in § 1.1j of this chapter, who on December 23, 1952, was authorized to practice before the Service and the Board may continue to represent, subject to the provisions of § 292.3.

§ 292.2 *Requests by organizations for recognition*—(a) *Form G-27.* A request for recognition by an organization described in § 1.1j of this chapter shall be filed on Form G-27 with a regional commissioner, district director, or the Commissioner for transmittal to the Board, or with the Board. The Board may require such additional information or investigation as may be necessary before approving or denying the request. The organization will be advised of the action taken by the Board.

(b) *Accreditation.* An organization described in § 1.1j of this chapter may certify as its accredited representatives only persons who are citizens of the United States and are of good moral character. Certificates may be filed with a regional commissioner, district director, officer in charge, or the Commissioner, for transmittal to the Board, or with the Board. Additions or deletions shall be similarly certified. The eligibility of a representative to appear shall terminate upon the deletion of his name from the organization's list of accredited representatives or when the organization is no longer recognized by the Board as being of the character described in § 1.1j of this chapter. A person who is authorized to represent an organization described in § 1.1j of this chapter may continue without being accredited to appear before the Board or the Service until July 1, 1958, subject to the provisions of § 292.3.

(c) *Roster.* The Board shall maintain an alphabetical roster of recognized organizations and their accredited representatives. A copy of the roster shall be furnished the Commissioner, and he shall be advised from time to time of changes therein.

§ 292.3 *Suspension or disbarment*—(a) *Grounds.* The Board, with the approval of the Attorney General, may suspend or bar from further representation an attorney or representative if it shall find that it is in the public interest to do so. The suspension or disbarment of an attorney or representative who is within one or more of the following categories shall be deemed to be in the public interest, for the purpose of this part, but the enumeration of the following categories does not establish the exclusive grounds for suspension or disbarment in the public interest:

(1) Who charges or receives, either directly or indirectly, any fee or compensation for services which may be deemed to be grossly

IMMIGRATION AND NATIONALITY ACT

excessive in relation to the services performed, or who, being an accredited representative of an organization recognized under § 1.1j of this chapter, charges or receives either directly or indirectly any fee or compensation for services rendered to any person, except that an accredited representative of such an organization may be regularly compensated by the organization of which he is an accredited representative;

(2) Who, with intent to defraud or deceive, bribes, attempts to bribe, coerces, or attempts to coerce, by any means whatsoever, any person, including a party to a case, or an officer or employee of the Service or Board, to commit an act or to refrain from performing an act in connection with any case;

(3) Who willfully misleads, misinforms, or deceives an officer or employee of the Department of Justice concerning any material and relevant fact in connection with a case;

(4) Who willfully deceives, misleads, or threatens any party to a case concerning any matter relating to the case;

(5) Who solicits practice in any unethical or unprofessional manner, including, but not limited to, the use of runners, or advertising his availability to handle immigration, naturalization, or nationality matters;

(6) Who represents, as an associate, any person who, known to him, solicits practice in any unethical or unprofessional manner, including, but not limited to, the use of runners, or advertising his availability to handle immigration, naturalization, or nationality matters;

(7) Who has been temporarily suspended, and such suspension is still in effect, or permanently disbarred, from practice in any court, Federal, State (including the District of Columbia), territorial, or insular;

(8) Who is temporarily suspended, and such suspension is still in effect, or permanently disbarred, from practice in a representative capacity before any executive department, board, commission, or other governmental unit, Federal, State (including the District of Columbia), territorial, or insular;

(9) Who, by use of his name, personal appearance, or any device, aids and abets any person to practice during the period of his suspension or disbarment, such suspension or disbarment being known to him;

(10) Who willfully made false and material statements or representations with respect to his qualifications or authority to represent others in any case;

SUPPLEMENT

(11) Who engages in contumelious or otherwise obnoxious conduct with respect to a case in which he acts in a representative capacity, which in the opinion of the Board, would constitute cause for suspension or disbarment if the case was pending before a court, or which, in such a judicial proceeding, would constitute a contempt of court;

(12) Who, having been furnished with a copy of any portion of the record in a case, willfully fails to surrender such copy upon final disposition of the case or upon demand, or willfully and without authorization makes and retains a copy of the material furnished; or

(13) Who has been convicted of a felony, or, having been convicted of any crime is sentenced to imprisonment for a term of more than one year.

(b) *Procedure.* If an investigation establishes to the satisfaction of the regional commissioner that suspension or disbarment proceedings should be instituted, he shall cause a copy of the written charges to be served upon the attorney or representative, either personally or by registered mail, with notice to show cause within a specified time, not less than 30 days, why he should not be suspended or disbarred. The notice shall also advise that after answer has been made and the matter is at issue, a hearing before a representative of the regional commissioner may be requested. When a hearing is requested, the regional commissioner will specify the time and place therefor and specially designate the officer who shall preside and the officer who shall present the evidence. If an answer is not received within 3 days after expiration of the period prescribed to show cause, defense to the charges is waived. When a hearing is not requested in the answer, the regional commissioner shall forward the complete record to the Board with his recommendation. The attorney or representative, either with or without counsel, and the regional commissioner, by the service officer within the purview of § 3.1 (e) of this chapter, shall have the privilege of appearing before the Board for oral argument at a time specified by the Board. The Board shall consider the record and render its decision. The order of the Board shall constitute the final disposition of the proceeding: *Provided, however,* That if the order is to suspend or disbar, or if any one of the circumstances described in § 3.1 (h) of this chapter is present, the Board shall refer the record to the Attorney General for review of its decision and in such case the order of the Attorney General shall be the final determination of the proceeding. When the final order is for suspension or disbarment, the attorney or representative shall not thereafter be permitted to represent until authorized by the Board.

IMMIGRATION AND NATIONALITY ACT

§ 292.4 *Appearances*—(a) *Form G-28*. An appearance shall be filed on Form G-28 by the attorney or representative appearing in each case. Thereafter, substitution may be permitted upon the written withdrawal of the attorney or representative of record or upon notification of the new attorney or representative. When an appearance is made by a person acting in a representative capacity, his personal appearance or signature shall constitute a representation that under the provisions of this chapter he is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required.

(b) *Availability of records*. During the time a case is pending, the unrepresented person or the attorney or representative of record shall be permitted to review the record and, upon request, be lent a copy of the testimony adduced upon giving his receipt for such copy and pledging that a copy thereof will not be made, that it will be retained in his possession and control, and that it will be surrendered upon final disposition of the case or upon demand.

§ 292.5 *Service upon and action by attorney or representative of record*—(a) *Representative capacity*. Whenever a person is required by any of the provisions of this chapter to give or be given notice; to serve or be served with any paper other than a warrant of arrest or a subpoena; to make a motion; to file or submit an application or other document; or to perform or waive the performance of any act, such notice, service, motion, filing, submission, performance, or waiver shall be given by or to, served by or upon, made by, or requested of, the attorney or representative of record, or the person himself if unrepresented. Except where otherwise specifically provided in this chapter, whenever a notice, decision, or other paper is required to be given or served, it shall be done by personal service or by certified or registered mail upon the attorney or representative of record.

(b) *Right to representation*. Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative who shall be permitted to examine or cross-examine such person and witnesses, to introduce evidence, to make objections which shall be stated succinctly and entered on the record, and to submit briefs.

Page 456

PART 316—GOOD MORAL CHARACTER

§ 316.1 *Good moral character; exceptions*. The requirement of section 316 of the Immigration and Nationality Act that no person shall be naturalized unless he is and has been during the periods

SUPPLEMENT

referred to in that section a person of good moral character shall not apply to:

- (a) Persons who acquire United States citizenship through the naturalization of a parent or parents under section 320 or 321 of the Immigration and Nationality Act.
- (b) Danish citizens who make application to renounce their citizenship under section 306 (a) (1) of the Immigration and Nationality Act.
- (c) Former United States citizens who make application to regain citizenship under section 324 (c) of the act.

Page 457

PART 316a—RESIDENCE, PHYSICAL PRESENCE AND ABSENCE

Sec.

316a.1 *Absence for which benefits of section 307 (b) or 308 of the Nationality Act of 1940 have been granted; effect on continuous residence requirement.*

316a.21 *Application for benefits with respect to absences; appeal.*

§ 316a.1 Absence for which benefits of section 307 (b) or 308 of the Nationality Act of 1940 have been granted; effect on continuous residence requirement. No absence from the United States which commenced prior to the effective date of the Immigration and Nationality Act, whether or not it continued beyond that date, in connection with which an application for exemption from the usual residence requirements under the naturalization laws was made under section 307 (b) or 308 of the Nationality Act of 1940 and acted upon favorably by the Attorney General, shall be regarded as having broken the continuity of residence required by section 316 (a) of the Immigration and Nationality Act, provided that satisfactory proof that the absence was for a purpose described in section 307 (b) or 308 of the Nationality Act of 1940, is presented to the court, and provided that the provisions of section 316 (a) of the Immigration and Nationality Act are otherwise complied with.

§ 316a.21 Application for benefits with respect to absences; appeal.

(a) An application for the residence benefits of section 316 (b) of the Immigration and Nationality Act to cover an absence from the United States for a continuous period of one year or more shall be submitted to the Service on Form N-470 in accordance with the instructions contained therein. The application shall be filed either before or after the applicant's employment commences but before the applicant has been absent from the United States for a continuous period of one year. There shall be submitted with the application a fee of \$10.00.

IMMIGRATION AND NATIONALITY ACT

(b) An application for the residence and physical presence benefits of section 317 of the Immigration and Nationality Act to cover any absences from the United States, whether before or after December 24, 1952, shall be submitted to the Service on Form N-470 in accordance with the instructions contained therein, either before or after the absence from the United States, or the performance of the functions or the services described in that section. There shall be submitted with the application a fee of \$10.00.

(c) The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter (page 291).

Page 458

PART 319—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SPOUSES OF UNITED STATES CITIZENS

Sec.

- 319.1 Person living in marital union with United States citizen spouse.
- 319.2 Person whose United States citizen spouse is employed abroad.
- 319.11 Procedural requirements.

§ 319.1 *Person living in marital union with United States citizen spouse.* A person of the class described in section 319 (a) of the Immigration and Nationality Act shall establish his good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition to the good order and happiness of the United States for the period of three years immediately preceding the date of filing the petition and from that date to the time of admission to citizenship.

§ 319.2 *Person whose United States citizen spouse is employed abroad.* A person of the class described in section 319 (b) of the Immigration and Nationality Act shall establish an intention in good faith, upon naturalization, to reside abroad with the United States citizen spouse and to take up residence in the United States immediately upon the termination of the employment abroad of such spouse. It shall be established that at the time of filing of the petition for naturalization such person was in the United States pursuant to a lawful admission for permanent residence, and that he is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

§ 319.11 *Procedural requirements.* A person described in §§ 319.1 and 319.2 shall submit to the Service an application to file a petition

SUPPLEMENT

for naturalization on Form N-400 in accordance with the instructions contained therein. The petition for naturalization of such person shall be filed on Form N-405, in duplicate.

Page 459 (see also page 205 this supplement)

PART 322—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: CHILDREN OF CITIZEN PARENT

§ 322.11 *Procedural requirements.* An application to file a petition for naturalization in behalf of a child under section 322 or 323 of the Immigration and Nationality Act shall be submitted to the Service on Form N-402, in accordance with the instructions contained therein, by the United States citizen parent or parents or adoptive parent or parents. Such application shall be submitted in time to permit the naturalization of the child prior to its eighteenth birthday anniversary. The petition for naturalization shall be filed on Form N-407 in duplicate, in a naturalization court within whose jurisdiction the petitioning parent or parents and the child reside unless exempted therefrom by new section 323 (c). There shall be included in the petition the affidavits of two credible witnesses, citizens of the United States, stating (a) the length of time the witnesses have known the petitioning parent or parents and the child, (b) that to the best of the witnesses' knowledge and belief the child is, and during the applicable period has been, a person of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States, (c) that the child is qualified in all respects to become a citizen of the United States, (d) that the child is permanently residing with the petitioning parent or parents in the United States and the period of such residence and (e) in the case of an adopted child, the period of time they have known the child to be in the legal custody of the petitioning parent or parents and to be physically present in the United States. At the hearing on the petition the qualifications described in sections 322 and 323 of the Immigration and Nationality Act shall be proven by the oral testimony of witnesses in the manner provided in Part 335b of this chapter. A child, under this part, is not required to establish any particular period of residence in a State.

IMMIGRATION AND NATIONALITY ACT

Page 460

PART 324—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED:
WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP BY MARRIAGE

Sec.

- 324.11 Former citizen at birth or by naturalization; procedural requirements.
- 324.12 A woman, citizen of the United States at birth, who lost or is believed to have lost citizenship by marriage and whose marriage has terminated; procedural requirements.
- 324.13 Women restored to United States citizenship by the act of June 25, 1936, as amended by the act of July 2, 1940.
- 324.14 Former citizen of the United States whose naturalization by taking the oath is authorized by a private law.

§ 324.11 Former citizen at birth or by naturalization; procedural requirements. A former citizen of the United States of the class described in section 324 (a) of the Immigration and Nationality Act shall submit to the Service an application to file a petition for naturalization, on Form N-400 and Supplemental Form N-400A, in accordance with instructions contained therein. The petition for naturalization of such person shall be filed on Form N-405, in duplicate, in any naturalization court, regardless of the petitioner's residence, and need not aver that it is the intention of the petitioner to reside permanently in the United States. The petition shall be verified by at least two United States citizen witnesses as provided in § 334.21 of this chapter. At the hearing on the petition the qualifications described in sections 324 (a) and (b) of the Immigration and Nationality Act shall be proven in the manner provided in Part 335b of this chapter. The petition may be heard immediately, provided a certificate of examination on Form N-440, in duplicate, is attached thereto, as provided in § 332.12 of this chapter. If the final hearing on the petition is held within sixty days preceding the holding of a general election within the territorial jurisdiction of the naturalization court, the petitioner shall not be permitted to take the oath prescribed in Part 337 of this chapter prior to the tenth day next following such general election. There shall be inserted after averment 10 of Form N-405 at the time of the filing thereof an averment of the petitioner's loss of citizenship, as follows:

I was formerly a citizen of the United States by _____
(Indicate whether
by birth or naturalization) on _____ and lost my citizen-
ship by marriage on _____ to _____
(Month day year) (Name of husband)
a citizen or subject of _____. I have not
(Name of foreign country)

SUPPLEMENT

acquired any other nationality by an affirmative act other than by marriage.

§ 324.12 *A woman, citizen of the United States at birth, who lost or is believed to have lost citizenship by marriage and whose marriage has terminated; procedural requirements.* A woman, formerly a citizen of the United States at birth, who applies in the United States to regain her citizenship under section 324 (c) of the Immigration and Nationality Act, shall submit to the Service a preliminary application to take the oath of allegiance, on Form N-401, in accordance with the instructions contained therein. The oath may be taken before the judge or clerk of any naturalization court, regardless of the applicant's place of residence. The applicant shall establish that it is her intention, in good faith, to assume and discharge the obligations of the oath of allegiance and that her attitude toward the Constitution and laws of the United States renders her capable of fulfilling the obligations of such oath. The applicant shall not be naturalized if, within the period of ten years immediately preceding the filing of the application to take the oath of allegiance or after such filing and before taking such oath she is, or has been found to be within any of the classes of persons described in section 313 of the Immigration and Nationality Act. The eligibility of the applicant to take the oath shall be investigated by a member of the Service who shall make an appropriate recommendation to the naturalization court. The application to the court shall be made on Form N-408, in triplicate. The original shall be retained as a part of the court record and numbered consecutively in a separate series, and the duplicate forwarded to the appropriate district director with duplicates of other naturalization papers. After the applicant has taken the oath of allegiance, the clerk of court shall furnish the applicant, upon demand, the triplicate copy of Form N-408, properly certified, for which a fee not exceeding \$5.00 may be charged. No charge shall be made by the clerk of court for the filing of Form N-408. In case the applicant does not demand the triplicate Form N-408, it shall be transmitted to the appropriate district director with the duplicate of said form. The oath of allegiance may be taken before any diplomatic or consular officer of the United States abroad, in accordance with such regulations as may be prescribed by the Secretary of State.

§ 324.13 *Women restored to United States citizenship by the act of June 25, 1936, as amended by the act of July 2, 1940.* A woman who was restored to citizenship by the act of June 25, 1936, as amended by the act of July 2, 1940, but who failed to take the oath of allegiance prescribed by the naturalization laws prior to December 24, 1952, may take the oath of allegiance prescribed by Part 337

IMMIGRATION AND NATIONALITY ACT

before any naturalization court on or after December 24, 1952. Such woman shall comply with the procedural requirements of § 324.12 except that a fee not exceeding \$1.00 may be charged if the woman demands the triplicate copy of Form N-408, properly certified.

§ 324.14 Former citizen of the United States whose naturalization by taking the oath is authorized by a private law. A former citizen of the United States whose naturalization by taking the oath prescribed in section 337 of the Immigration and Nationality Act before any naturalization court is authorized by a private law shall submit to the Service a preliminary application on Form N-401. The application to the court shall be made on Form N-408, in triplicate, amended as set forth in § 332a.13 of this chapter. A copy of the private law shall be attached to Form N-408. The provisions of § 324.12 relating to fees and the disposition of Form N-408 apply equally to a proceeding under this section.

Page 465

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: VETERANS OF THE UNITED STATES ARMED FORCES WHO SERVED DURING WORLD WAR I OR WORLD WAR II

Sec.

- 329.1 World War I; definition.
- 329.2 Proof of character, attachment, and disposition.
- 329.21 Procedural requirements.

§ 329.1 World War I; definition. For the purposes of section 329 of the Immigration and Nationality Act, World War I shall be deemed to have commenced on April 6, 1917, and to have ended on November 11, 1918.

§ 329.2 Proof of character, attachment, and disposition. A person of the class described in section 329 (a) or 402 (e) of the Immigration and Nationality Act, shall establish that he is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, in the manner provided by § 334.21 and Part 335b of this chapter.

§ 329.21 Procedural requirements. A person of the class described in section 329 or 402 (e) of the act shall submit to the Service an application to file a petition for naturalization on Form N-400. The certification required by section 329 (b) (4) of the act to prove service shall be requested by the applicant on Form N-426, in triplicate, and submitted with Form N-400. The petition for naturalization shall be filed on Form N-405, in duplicate, in any naturalization court,

SUPPLEMENT

regardless of the residence of the petitioner. There shall be inserted after averment 10 of Form N-405, at the time of filing thereof, an averment as follows:

I served honorably in an active duty status in _____
(Branch of service)
under Service No. _____ from _____, 19____, to
_____, 19____, and was separated under honorable conditions on _____, 19____. I entered such service at _____
(City)

(State)

The petition shall be verified by at least two United States citizen witnesses as provided in § 334.21 of this chapter. The petitioner may be naturalized immediately, provided a certificate of examination on Form N-440, in duplicate, is attached to the petition as provided in § 332.12 of this chapter.

Page 466

PART 330—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SEAMEN

Sec.

- 330.1 Service on vessels after lawful admission for permanent residence; when deemed residence and physical presence in the United States.
- 330.3 Proof of qualifications.
- 330.11 Procedural requirements.

§ 330.1 Service on vessels after lawful admission for permanent residence; when deemed residence and physical presence in the United States. Service at any time after lawful admission for permanent residence, whether before or after the effective date of the Immigration and Nationality Act, on board vessels of the classes described in section 330 (a) (1) of the Immigration and Nationality Act, shall under the conditions specified in that section be deemed residence and physical presence within the United States within the meaning of section 316 (a) of the Immigration and Nationality Act.

§ 330.3 Proof of qualifications—(a) Residence and physical presence in the United States. Except as otherwise provided in this part, a person having the service described in this part shall prove that he has complied with all the applicable provisions of Chapter 2, Title III of the Immigration and Nationality Act, except that proof of residence and physical presence within the United States for the periods of such service shall be made by duly authenticated copies of the records of the executive departments or agencies having custody of the records covering the person's service on vessels of the United

IMMIGRATION AND NATIONALITY ACT

States Government, or by certificates from the masters of the vessels if service was on other than vessels of the United States Government, which records or certificates shall describe the vessels and the periods of service, and shall attest that during those periods the person served honorably or with good conduct.

(b) *Character, attachment, and disposition; State residence.* The records or certificates described in paragraph (a) of this section shall be accepted also as proof of good moral character, attachment to the principles of the Constitution, and favorable disposition to the good order and happiness of the United States for that portion of the service performed within the period of five years immediately preceding the date of the petition, as proof of residence within the State in which the petition is filed.

§ 330.11 *Procedural requirements.* A person claiming the benefits of § 330.1 shall submit to the Service an application to file a petition for naturalization, together with Supplemental Form N-400-B, in accordance with the instructions contained therein. The petition for naturalization shall be filed on Form N-405 in duplicate in a naturalization court having jurisdiction over the petitioner's place of residence. There shall be attached to, and made a part of the original and duplicate of, the petition for naturalization at the time of filing an affidavit of the petitioner sworn to before the clerk of court or an officer of the Service, on Form N-421, in duplicate, fully describing the vessel or vessels on which the petitioner has served and the periods of service. The petition shall be verified by at least two United States citizen witnesses, as provided in § 334.21 of this chapter.

Page 470

PART 332—PRELIMINARY INVESTIGATION OF APPLICANTS FOR NATURALIZATION AND WITNESSES

Sec.

- 332.11 Investigation preliminary to filing petition for naturalization.
- 332.12 Certificate by examiner whenever petitioner is entitled to immediate hearing.
- 332.13 Use of record preliminary investigation.
- 332.14 Notice of proposed recommendation of denial; findings, conclusion, and recommendation.

§ 332.11 *Investigation preliminary to filing petition for naturalization—(a) Scope of investigation.* Whenever practicable, each applicant for naturalization and his witnesses shall appear in person before an officer of the Service authorized to administer oaths, prior to the filing of a petition for naturalization, and give testimony under oath concerning the applicant's mental and moral qualifications for citizenship, attachment to the principles of the Constitution, and disposition

SUPPLEMENT

to the good order and happiness of the United States, the qualifications of the witnesses, and the other qualifications to become a naturalized citizen as required by law. The investigation shall be uniform throughout the United States. During the interrogation of the applicant and at his request, his attorney or representative who has, when required, been admitted to practice in accordance with Part 292 of this chapter, may be permitted to be present and observe the interrogation and make notes but shall not otherwise participate therein.

(b) *Conduct of investigation.* The Service officer, prior to the beginning of the investigation, shall make known to the applicant and the witnesses the official capacity in which he is conducting the investigation. The applicant and such witness shall be questioned under oath separately and apart from one another and apart from the public. The applicant shall be questioned as to each assertion made by him in his application to file a petition and in any supplemental form. Whenever necessary, the written answers in the forms shall be corrected by the officer to conform to the oral statements made under oath. The Service officer, in his discretion, may have a stenographic transcript made, or prepare affidavits covering testimony of the applicant or witnesses. The questions to the applicant and the witnesses shall be repeated in different form and elaborated, if necessary, until the officer conducting the investigation is satisfied that the person being questioned fully understands them. At the conclusion of the investigation all corrections made on the application form and supplements thereto shall be consecutively numbered and recorded in the space provided therefor in the applicant's affidavit contained in the form. The affidavit shall then be subscribed and sworn to by the applicant and signed by the Service officer. The witnesses shall be questioned to develop their own credibility and competency as well as the extent of their personal knowledge of the applicant's qualifications to become a naturalized citizen. If the applicant is excepted from the requirement of reading and writing, and speaking English, the questioning, including the examination of the applicant's knowledge and understanding of the Constitution, history, and form of Government of the United States, may be conducted through an interpreter.

§ 332.12 *Certificate by examiner whenever petitioner is entitled to immediate hearing.* The officer or employee conducting the preliminary investigation shall execute a certificate of examination on Form N-440 in duplicate, for attachment to the original and duplicate petitions for naturalization, in any case in which the petitioner, under the provisions of the Immigration and Nationality Act applicable to

IMMIGRATION AND NATIONALITY ACT

his case, is entitled to an immediate hearing following examination by a representative of the Service.

§ 332.13 *Use of record of preliminary investigation.* The record of the preliminary investigation, including the executed and corrected application form and supplements thereto, affidavits, transcripts of testimony, documents, and other evidence, shall, in those cases in which a preliminary examination is to be held under Part 335 of this chapter, be submitted to the examiner designated to conduct such examination, for his use in examining the petitioner and witnesses. In those cases in which no preliminary examination is held the recommendation to the naturalization court shall be based upon the record of the preliminary investigation and such other evidence as may be available.

§ 332.14 *Notice of proposed recommendation of denial; findings, conclusion, and recommendation.* In those cases in which the recommendation to the court is for denial of the petition, and no preliminary examination under Part 335 of this chapter is held, an officer of the Service shall, as soon as practicable after the preliminary investigation has been concluded, prepare a memorandum in behalf of the Service in the manner described in § 335.12 of this chapter, and subject to review by the regional commissioner for presentation to the court at the final hearing. The petitioner shall be given written notice on Form N-425 advising him of the recommendation which will be made to the court and the specific reasons therefor. The notice and a copy of the memorandum shall be sent the petitioner by certified mail, return receipt requested, after review of the recommendation by the regional commissioner, if made, and at least thirty days prior to final hearing. The hearing before the court may be held less than thirty days after such notification if the petitioner agrees thereto.

Page 472

PART 332a—OFFICIAL FORMS

Sec.

- 332a.1 Official forms essential to exercise of jurisdiction.
- 332a.2 Official forms prescribed for use of clerks of naturalization courts.
- 332a.11 Initial application for official forms.
- 332a.12 Subsequent application for official forms.
- 332a.13 Alteration of forms of petitions or applications for naturalization.

§ 332a.1 *Official forms essential to exercise of jurisdiction.* Before exercising jurisdiction in naturalization proceedings, the naturalization court shall direct the clerk of such court upon written application to obtain from the Service, in accordance with section 310 (c) of the Immigration and Nationality Act, proper forms, records, books, and supplies required in naturalization proceedings. Such jurisdiction

SUPPLEMENT

may not be exercised until such official forms, records, and books have been supplied to such court. Only such forms as are supplied shall be used in naturalization proceedings. Where sessions of the court are held at different places, the judge of such court may require the clerk to obtain a separate supply of official forms, records and books for each such place.

§ 332a.2 Official forms prescribed for use of clerks of naturalization courts. The following described forms only shall be used by clerks of courts having naturalization jurisdiction, in the exercise of such jurisdiction.

§ 332a.11 Initial application for official forms. Whenever the initial application for forms, records, books, and supplies is made by a State court of record, it shall be accompanied by a certificate of the Attorney General of the State, certifying that the said court is a court of record, having a seal, a clerk, and jurisdiction in actions at law or in equity, or at law and in equity, in which the amount in controversy is unlimited.

§ 332a.12 Subsequent application for official forms. Included with the initial supply of official forms, records, and books furnished to the various courts by the Service shall be Form N-3 entitled "Requisition for Forms and Binders," and thereafter such forms shall be used by clerks of courts in making requisition for forms, records, books, and supplies for use in naturalization proceedings in their respective courts.

§ 332a.13 Alteration of forms of petitions or applications for naturalization. The official forms for petitions or applications for naturalization to the court shall be altered by the clerk of the court as follows:

(a) *Insertion of applicable acts or sections of acts.* Whenever the petition form is designed for use under more than one act or more than one section of an act, by inserting under the title of the form the applicable act or section.

(b) *Exemption from residence or physical presence in the United States or State.* Whenever residence or physical presence in the United States or State for any specified period is not required, by striking out the allegations relating thereto and the statements in the affidavits of witnesses as to the period of United States or State residence or physical presence.

(c) *Exemption from lawful admission for permanent residence.* Whenever lawful admission for permanent residence is not required, by striking out the allegations relating thereto.

IMMIGRATION AND NATIONALITY ACT

(d) *Exemption from intention to reside permanently in the United States.* Whenever intention to reside permanently in the United States is not required, by striking out the allegations relating thereto.

(e) *Supplemental affidavits filed with petition for naturalization.* Whenever a supplemental affidavit is filed with the petition, by adding to allegation 18 on Form N-405 "and supplemental affidavit on Form N-_____."

(f) *Oath of allegiance.* Whenever the petitioner or applicant for naturalization is exempt from taking the oath of allegiance prescribed in Part 337 of this chapter in its entirety, by striking from the oath of allegiance the inapplicable clauses.

Page 476

PART 332d—DESIGNATION OF EMPLOYEES TO ADMINISTER OATHS AND TAKE DEPOSITIONS

§ 332d.1 *Designation of employees to administer oaths and take depositions.* All immigration officers and other officers or employees of the Service of an equal or higher grade are hereby designated to administer oaths and take depositions in matters relating to the administration of the naturalization and citizenship laws. In addition, such other employees as may be designated by a district director are hereby authorized to administer oaths.

Page 482

PART 334a—DECLARATION OF INTENTION

Sec.

- 334a.11 Preliminary form for declaration of intention.
- 334a.12 Notification to applicant.
- 334a.13 Filing of declaration of intention.
- 334a.14 Execution and fee.
- 334a.15 Disposition.
- 334a.16 Declaration of intention; numbering, indexing, binding.

§ 334a.11 *Preliminary form for declaration of intention.* Each prospective declarant shall, before making and filing a declaration of intention, submit to the Service an application therefor on Form N-300 in accordance with the instructions contained therein. The application may be submitted at any time after the applicant has been lawfully admitted for permanent residence and has attained the age of eighteen years.

§ 334a.12 *Notification to applicant.* Following approval of the application by the Service, the applicant shall be notified when and where to appear to make and file the declaration of intention.

SUPPLEMENT

§ 334a.13 *Filing of declaration of intention.* A clerk of court or his authorized deputy shall not accept a declaration of intention for filing, unless and until there shall have been received from the Service the applicant's approved Form N-300 authorizing the issuance of the declaration and showing that the applicant is residing in the United States pursuant to a lawful admission for permanent residence.

§ 334a.14 *Execution and fee.* The declaration of intention shall be executed by the alien under oath on Form N-315, in triplicate, before the clerk of any court exercising naturalization jurisdiction or his authorized deputy, regardless of the place of residence of the applicant, and only in the office of said clerk. The applicant may sign the declaration and the photographs affixed thereto in any language, or by mark if unable to write. The declarant shall pay the clerk of court, at the time the declaration of intention is filed, the statutory fee of \$5.

§ 334a.15 *Disposition.* The original declaration of intention shall be retained and filed of record by the clerk of court, and the triplicate delivered forthwith to the alien. The duplicate, with Form N-300, shall be forwarded to the appropriate district director on the first day of the month following the month in which the declaration is filed, in accordance with § 339.2 of this chapter for inclusion in the declarant's file.

§ 334a.16 *Declaration of intention; numbering, indexing, binding.* Declarations of intention shall be numbered consecutively in the order in which they are filed in a series separate from petitions. They shall be filed chronologically in separate volumes, indexed, and made a part of the records of the naturalization court.

Page 483

PART 335—PRELIMINARY EXAMINATION ON PETITIONS FOR NATURALIZATION

Sec.

- 335.11 Preliminary examination pursuant to section 335 (b) of the Immigration and Nationality Act.
- 335.12 Recommendations of the designated examiner and the regional commissioner; notice.
- 335.13 Notice of recommendation of designated examiner.

§ 335.11 *Preliminary examination pursuant to section 335 (b) of the Immigration and Nationality Act—(a) When held.* Preliminary examinations shall be open to the public, and shall, where practicable, be held immediately after the petition for naturalization is filed with the clerk of the court unless, in the opinion of the district director, the interests of good administration would be better served by holding

IMMIGRATION AND NATIONALITY ACT

such examinations prior to the filing of the petition in the office of the clerk of court, but in no event shall such examinations be held before the petition has been properly executed by the petitioner and his verifying witnesses.

(b) *Conduct of examination.* Preliminary examinations shall be held before an employee of the Service, designated by the district director to conduct such proceedings and to make findings and recommendations thereon to the naturalization court, who shall be known as the "designated examiner." The petitioner and his witnesses and the witnesses produced on behalf of the Government shall be present. The designated examiner shall, prior to the commencement of the examination, make known to the petitioner his official capacity and that of any other officer of the Service who may participate in the proceeding. The designated examiner shall have before him the entire record of the preliminary interrogation, including the petitioner's application to file a petition for naturalization (Form N-400) and any other evidence or data that may be relevant or material to the inquiry. All testimony taken at the examination shall be under oath or affirmation administered by the designated examiner. The designated examiner may interrogate the petitioner and witnesses produced in behalf of the petitioner or the Government, and present evidence touching upon the petitioner's admissibility to citizenship. He shall regulate the course of the examination, rule upon applications for the issuance of subpoenas and issue such subpoenas in proper cases, grant or deny continuances, and rule on all objections to the introduction of evidence, which rulings shall be entered on the record. Evidence held by the designated examiner to be inadmissible shall nevertheless be received into the record subject to the ruling of the court. The petitioner and the Government shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. If the petitioner is not represented by an attorney or representative, the designated examiner shall assist the petitioner in the introduction of all evidence available in his behalf. All documentary or written evidence shall be properly identified and introduced into the record as exhibits by number, unless read into the record.

(c) *Assignment of examining officer at preliminary examination.* The district director may in his discretion assign an employee of the Service to act as examining officer at the preliminary examination. Such employee shall examine and cross-examine witnesses produced in behalf of the Government or the petitioner and present evidence pertinent to the petitioner's admissibility to citizenship. The designated examiner may take such part in the interrogation of the peti-

SUPPLEMENT

tioner and witnesses and the introduction of evidence as he may deem necessary.

(d) *Stenographic reporting of proceedings; mechanical recording equipment.* A stenographer shall be in attendance whenever, in the opinion of the designated examiner, such attendance is desirable, and in every case to which an examining officer is assigned. The stenographer shall record verbatim the entire proceedings, including the oaths administered and rulings on objections, but shall not record arguments in support of objections, or statements made off the record with the consent of the petitioner. The stenographer shall certify that the transcribed minutes constitute a complete and accurate record of the examination. Whenever, in the opinion of the designated examiner the use of mechanical recording equipment in lieu of a stenographer is deemed desirable, the proceedings may be recorded by such equipment.

(e) *Issuance of subpoenas; attendance and mileage fees.* Subpoenas requiring the attendance of witnesses or the production of documentary evidence, or both, may be issued by the designated examiner, upon his own volition or upon written application of the petitioner or his attorney or representative, the examining officer, or the Service. Such written application shall specify, as nearly as may be, the relevance, materiality, and scope of the testimony or documentary evidence sought and show affirmatively that the testimony or documentary evidence cannot otherwise be produced. Subpoenas shall be issued on Form I-138 and due record shall be made of their service. The subpoena may be served by any person over 18 years of age, not a party to the case, designated to make such service by the district director. Mileage and fees for witnesses subpoenaed under this section shall be paid by the party at whose instance the subpoena is issued at rates allowed and under conditions prescribed by the naturalization court in which the petition is pending. Before issuing a subpoena the designated examiner may require a deposit of an amount adequate to cover the fees and mileage involved. If the witness subpoenaed neglects or refuses to testify or produce documentary evidence as directed by the subpoena, the district director shall request the United States Attorney for the proper district to report such neglect or refusal to any court exercising naturalization jurisdiction and to file a motion in such court for an order directing the witness to appear and testify and to produce the documentary evidence described in the subpoena.

(f) *Briefs.* At the conclusion of the preliminary examination the petitioner or his attorney or representative, and the examining officer if one was assigned, may submit briefs in support of arguments made or issues raised at the examination.

IMMIGRATION AND NATIONALITY ACT

(g) *Representation by attorney or representative; absence of representative; advice to petitioner.* The petitioner may be represented by an attorney or a representative who has filed an appearance in accordance with Part 292 of this chapter. If at any stage of the preliminary examination it appears to the designated examiner that he may recommend denial of the petition, or granting thereof with the facts to be presented to the court, he shall advise the petitioner of his right to be represented by an attorney or representative. A continuance of the examination shall be granted upon the petitioner's motion for the purpose of obtaining an attorney or representative. The petitioner's attorney or a representative shall be permitted to be present at all times during the preliminary examination or at any subsequent examinations and the petitioner shall not in any such examination or subsequent examinations be interrogated in the absence of his attorney or representative, unless the petitioner waives such appearance. The attorney or a representative shall be permitted to offer evidence to meet any evidence presented or adduced by the Government or the designated examiner. A petitioner who is not represented by an attorney or a representative shall be entitled to all the benefits and the privileges provided for in this section.

(h) *Designation of Service employees to conduct preliminary examinations.* All employees of the Service who have been designated to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make findings and recommendations thereon to such courts under the provisions of section 333 of the Nationality Act of 1940, as amended, and whose designations are still in force on December 24, 1952, are hereby designated under the provisions of section 335 of the Immigration and Nationality Act to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make findings and recommendations thereon to such courts. Designations under this paragraph and under paragraph (b) of this section shall remain in force until revoked.

§ 335.12 *Recommendations of the designated examiner and the regional commissioner; notice.* The designated examiner shall, as soon as practicable after conclusion of the preliminary examination, prepare an appropriate recommendation thereon for the court. If the designated examiner is of the opinion that the petition should be denied, or that the petition should be granted but the facts should be presented to the court, he shall prepare a memorandum containing a summary of the evidence adduced at the examination, findings of fact and conclusions of law, and his recommendation as to the final disposition of the petition by the court, and shall before final hearing, in those cases designated by the regional commissioner, submit the

SUPPLEMENT

memorandum to him for his views and recommendation. No evidence dehors the record or evidence that would not be admissible in judicial proceedings under recognized rules of evidence shall be considered in the preparation of the memorandum. The regional commissioner shall return the designated examiner's memorandum, the record, and any memorandum prepared by the regional commissioner containing his own views and recommendation for presentation to the court.

§ 335.13 *Notice of recommendation of designated examiner—*

(a) *Recommendation that petition be denied.* When the designated examiner proposes to recommend denial of the petition, the petitioner or his attorney or representative shall be notified thereof on Form N-425 and furnish a copy of the designated examiner's memorandum. The notice shall be sent by certified mail, with return receipt requested, after any review made by the regional commissioner and at least thirty days prior to final hearing. The petitioner shall inform the Service in writing within thirty days from the date of the notice whether he desires a hearing before the court.

(b) *Recommendation that petition be granted.* When the designated examiner proposes to recommend granting of the petition and to present the facts and issues to the court, the petitioner or his attorney or representative shall be notified of the recommendation and furnished a copy of the designated examiner's memorandum prior to the date of the hearing, and after any review made by the regional commissioner.

(c) *Disagreement between recommendations of designated examiner and the regional commissioner.* In those cases reviewed by the regional commissioner in which his views and recommendations do not agree with those of the designated examiner, the notice required by paragraphs (a) and (b) of this section shall also advise the petitioner of the recommendation of the regional commissioner and that both recommendations will be presented to the court. There shall also be enclosed with such notice a copy of the regional commissioner's memorandum.

Page 487

PART 335b—PROOF OF QUALIFICATIONS FOR NATURALIZATION: WITNESSES; DEPOSITIONS

Sec.

- 335b.1 Proof of residence and other qualifications.
- 335b.11 Substitution of witnesses; procedure.
- 335b.12 Depositions; procedure.

§ 335b.1 *Proof of residence and other qualifications—(a) Whenever State residence is required.* At the preliminary examination upon

IMMIGRATION AND NATIONALITY ACT

the petition for naturalization before a designated examiner, or if no preliminary examination is held, at the final hearing before the court, residence in the State in which the petitioner resides at the time of filing the petition, for at least six months immediately preceding the date of filing the petition and the other qualifications required by section 316 (a) of the Immigration and Nationality Act during such residence, shall be proved only by the oral testimony of two credible witnesses, citizens of the United States. Residence and other qualifications required by section 316 (a) of the Immigration and Nationality Act, for the period prior to such six-month period shall be proved either by depositions taken in accordance with § 335b.12 or by the oral testimony of at least two credible witnesses, citizens of the United States. If oral testimony is taken from witnesses who did not verify the petition, affidavits on Form N-451 shall be executed by such other witnesses, in duplicate, before the clerk of the court or the designated examiner, one copy of which shall be attached to the original petition and the other to the duplicate petition.

(b) *Whenever State residence is not required.* In any case in which State residence is not required to be established, the petitioner shall, at the preliminary examination before the designated examiner, or if no preliminary examination is held, at the final hearing before the court, prove his residence within the United States and the other qualifications required by section 316 (a) of the Immigration and Nationality Act, for such period as they have known the petitioner, by the oral testimony of two credible witnesses, citizens of the United States. That portion of the time during which the petitioner is required to establish residence within the United States and the other qualifications required by section 316 (a) of the Immigration and Nationality Act, which is not covered by the oral testimony of such witnesses, shall be proved either by depositions taken in accordance with § 335b.12, or by the oral testimony of at least two credible witnesses, citizens of the United States. If oral testimony is taken from witnesses who did not verify the petition, affidavits on Form N-451 shall be executed by them and filed in the manner described in paragraph (a) of this section.

(c) *Whenever petitioner is absent from the United States.* A petitioner who has been granted the benefits of section 316 (b) of the Immigration and Nationality Act or section 307 (b) of the Nationality Act of 1940 to cover his absence from the United States for the purposes specified in that section shall not be required to establish his qualifications under section 316 (a) of the Immigration and Nationality Act for the period of his absences by the testimony of witnesses, as required by this part. The qualifications during such period may

SUPPLEMENT

be established by any evidence satisfactory to the naturalization court.

(d) *Witnesses excused from final hearing.* If the testimony of the witnesses is heard at a preliminary examination under Part 335 of this chapter the witnesses may be excused by the designated examiner from appearance before the court at the final hearing, unless the petitioner otherwise demands or the court otherwise requires.

§ 335b.11 *Substitution of witnesses; procedure.* If the witnesses who verified the petition have not been excused from appearance at the final hearing and the petitioner is unable to produce such witnesses, other witnesses may be presented in their stead, upon notice given by the petitioner to the district director, within a reasonable time in advance of the date set for final hearing. If any of the verifying witnesses appear to be incompetent and the petitioner has acted in good faith in producing such witnesses, other witnesses may be substituted upon notice given in the manner described in this section. In no case shall a final hearing be held until after the substitute witnesses have been examined by the representative of the Service and an affidavit on Form N-451 has been executed in duplicate by the witnesses before such representative or the clerk of the court in the manner described in § 335b.1 (a).

§ 335b.12 *Depositions; procedure—(a) In the United States.* Depositions may be used to prove compliance with the requirements for naturalization during any period except the minimum period of State residence. Such depositions shall be taken only upon written interrogatories on Form N-462A. Except as otherwise provided in this section, they shall be made in the United States before an employee of the Service authorized to administer oaths and take depositions under Part 332d of this chapter, unless there is a likelihood of unusual delay or hardship, in which case the district director may authorize such depositions to be taken before a postmaster, without charge, or before a notary public or other person authorized to administer oaths for general purposes. In cases in which the depositions are taken other than before an employee of the Service or a postmaster, the petitioner, independently of the Service shall arrange with the officer who will take the depositions to defray all costs and expenses incident thereto. The petitioner or his attorney or representative may be present when the depositions are taken. Depositions taken under this section shall be sent to the district director having administrative supervision over the territory in which the petition is pending and by him forwarded to the clerk of the naturalization court prior to the final hearing, for filing with the petition.

IMMIGRATION AND NATIONALITY ACT

(b) *Outside the United States.* Petitioners for naturalization who, under sections of the Immigration and Nationality Act applicable to their cases, are exempt from the usual requirement of residence and physical presence in the United States, but who are required to establish good moral character, attachment to the principles of the Constitution, and favorable disposition to the good order and happiness of the United States for the period applicable to their cases, and who were absent from or were not residents of the United States during such period, may establish their qualifications during the periods of absence by depositions taken outside the United States in the manner described in paragraph (a) of this section. Such depositions shall be taken before any employee of the United States designated for that purpose by the Commissioner. The petitioner shall be informed that he will be required to defray all costs and expenses of the person taking the depositions, as may be authorized by law and that the petitioner shall arrange with the deponents for the payment of such costs and expenses independently of the Service.

Page 492

PART 337—OATH OF ALLEGIANCE

Sec.

- 337.1 Oath of allegiance.
- 337.2 Persons naturalized by judicial action; effective date.
- 337.3 Renunciation of title or order of nobility.
- 337.11 Oath of renunciation and allegiance; sickness or disability of petitioner.

§ 337.1 *Oath of allegiance*—(a) *Form of oath.* Except as otherwise provided in the Immigration and Nationality Act, a petitioner or applicant for naturalization shall, before being admitted to citizenship, take in open court the following oath of allegiance, to which he shall thereafter affix his signature on his petition or application for naturalization:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the armed forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.

SUPPLEMENT

(b) *Alteration of form of oath.* In those cases in which a petitioner or applicant for naturalization is exempt from taking the oath prescribed in paragraph (a) of this section in its entirety, the inapplicable clauses shall be deleted and the oath shall be taken in such altered form.

(c) *Obligations of oath.* A petitioner or applicant for naturalization shall, before being naturalized, establish that it is his intention, in good faith, to assume and discharge the obligations of the oath of allegiance, and that his attitude toward the Constitution and laws of the United States renders him capable of fulfilling the obligations of such oath.

§ 337.2 *Persons naturalized by judicial action; effective date.* Any person who was or shall hereafter be admitted to citizenship by the written order of a naturalization court, shall be deemed to be a citizen of the United States as of the date of taking the prescribed oath of allegiance. Whenever a waiver of such oath is granted by the court in the case of a child naturalized under section 322 or 323 of the Immigration and Nationality Act, the child shall become a citizen of the United States as of the date of such waiver.

§ 337.3 *Renunciation of title or order of nobility.* A petitioner for naturalization who has borne any hereditary title or has been of any of the orders of nobility in any foreign state, shall, in addition to taking the oath of allegiance prescribed by § 337.1, make under oath in open court an express renunciation of such title or order of nobility, in the following form:

I further renounce the title of _____
(give title or titles)
which I have heretofore held; or

I further renounce the order of nobility _____
(Give the order of nobility)
to which I have heretofore belonged.

§ 337.11 *Oath of renunciation and allegiance; sickness or disability of petitioner.* Whenever it appears that a petitioner for naturalization may be unable because of sickness or other disability to take the oath of allegiance in open court, the district director shall cause an investigation to be conducted to determine the circumstances, and shall report the condition of the petitioner to the naturalization court for the purpose of aiding the court to determine whether the oath may be taken at another place. The report shall show whether the sickness or other disability is of a nature which so incapacitates the person as to prevent him from appearing in open court.

IMMIGRATION AND NATIONALITY ACT

Page 493

PART 338—CERTIFICATE OF NATURALIZATION

Sec.

- 338.11 Execution and issuance.
- 338.12 Endorsement in case name is changed.
- 338.13 Spoiled certificate.
- 338.14 Delivery of certificates.
- 338.15 Signing of certificate.
- 338.16 Correction of certificates.

§ 338.11 *Execution and issuance.* When a petitioner for naturalization has duly taken and subscribed to the oath of allegiance and a final order admitting petitioner to citizenship has been duly signed by the court, a certificate of naturalization shall be issued by the clerk of the court on Form N-550, in duplicate. The certificates and the stub of the original thereof shall be signed by the petitioner. The certificate shall show under "former nationality" the name of the country of which the petitioner was last a citizen, as shown in the petition, even though petitioner may have been stateless at the time of admission to citizenship. The clerk or his deputy shall endorse the alien registration number on the stubs of the certificates, shall sign the certificates in his own handwriting, and enter on the stubs all the essential facts set forth in the certificates. Both copies of the certificate, including the stubs, shall be prepared in one operation on a typewriter with the use of carbon paper. Photographs shall be affixed to the original and duplicate certificates in the manner provided by Part 333 of this chapter. The stub of the original shall be removed and retained by the clerk of court and filed in an upright card file, or in a three by five inch card drawer. The original certificate shall be delivered to the petitioner. The duplicate copies of the certificates shall not be separated from their stubs and shall be forwarded to the appropriate office of the Immigration and Naturalization Service with all other duplicate papers in accordance with Part 339 of this chapter.

§ 338.12 *Endorsement in case name is changed.* Whenever the name of a petitioner has been changed by order of court as a part of a naturalization, the clerk of court shall make, date, and sign the following endorsement on the reverse side of the original and duplicate of the certificate of naturalization: "Name changed by decree of court from _____, as a part of the naturalization," inserting in full the original name of the petitioner. A similar notation shall be made on the stubs of the original and duplicate certificate. The certificate of naturalization shall be issued and the stub of the original thereof signed by the petitioner in the name as changed.

SUPPLEMENT

§ 338.13 *Spoiled certificate.* Whenever a certificate of naturalization is damaged, mutilated, defaced or otherwise spoiled before delivery by the clerk, the original and duplicate, with stubs intact, shall be marked "Spoiled" and transmitted to the appropriate immigration and naturalization office, in the manner described in § 339.2 of this chapter, with the monthly report of the clerk on Form N-4.

§ 338.14 *Delivery of certificates.* No certificate of naturalization shall be delivered by the clerk of court in any case in which the representative of the Service in attendance at the final naturalization hearing notifies the clerk of court that the naturalized person has not surrendered his alien registration receipt card. Upon subsequent receipt of notice from the district director that he has waived the surrender of the card or that the card has been surrendered, the certificate shall be delivered by the clerk of court.

§ 338.15 *Signing of certificate.* If a child, who has been admitted to citizenship under section 322 or section 323 of the Immigration and Nationality Act is unable to sign his name, the certificate of naturalization shall be signed by the petitioning parent or parents, whether natural or adoptive, as may be appropriate, and the signature shall read "(insert name of petitioning parent or parents) in behalf of (insert name of naturalized child)." A naturalized person whose petition was signed by him in a foreign language may sign his certificate of naturalization in the same manner.

§ 338.16 *Correction of certificates.* Whenever a certificate of naturalization has been delivered which does not conform to the facts shown on the petition for naturalization, or a clerical error was made in preparing the certificate, an application on Form N-458 may be made by the naturalized person to the district director exercising jurisdiction over the place in which the court is located to authorize the correction of the certificate. If the district director finds that a correction is justified and can be made without mutilating the certificate, he shall authorize the clerk of the issuing court on Form N-459, in duplicate, to make the necessary correction and to place a dated endorsement on the reverse of the certificate, over his signature and the seal of the court, explaining the correction. The authorization shall be filed with naturalization record, the corrected certificate returned to the naturalized person and the duplicate Form N-459 shall be endorsed to show the date and nature of the correction and endorsement made, and returned to the district director. No fee shall be charged the naturalized person for the correction. The district director shall forward such duplicate to the official Service file. When a correction would or does result in mutilation of the certificate, the district director may authorize the clerk of court on Form N-459,

IMMIGRATION AND NATIONALITY ACT

in duplicate, with the consent of the naturalized person, to issue without fee a new certificate from his supply, upon surrender of the incorrect certificate and submission of photographs. The surrendered certificate shall be marked "Spoiled" and transmitted to the district director with the duplicate copy of the new certificate and the duplicate Form N-459 appropriately endorsed, with the monthly report of the clerk on Form N-4. The original of the new certificate shall be delivered to the naturalized person. Objection shall be made by the Service to any application to the court for the alteration of a certificate of naturalization which would cause it to vary from the record on which the naturalization was granted.

Page 495

PART 339—FUNCTIONS AND DUTIES OF CLERKS OF NATURALIZATION COURTS

Sec.

- 339.1 Administration of oath to declarations of intention and petitions for naturalization.
- 339.2 Monthly reports.
- 339.3 Relinquishment of naturalization jurisdiction.
- 339.4 Binding of naturalization records.
- 339.5 Numbering and indexing and filing of petitions for naturalization and declarations of intention.

§ 339.1 Administration of oath to declarations of intention and petitions for naturalization. It shall be the duty of every clerk of a naturalization court to administer the required oath to each applicant for a declaration of intention. The clerk shall receive and file petitions and administer the required oaths to each petitioner and the witnesses to each petition, unless such petitioner and witnesses have executed the petition before a designated examiner.

§ 339.2 Monthly reports. Clerks of court shall on the first day of each month submit to the district director having administrative jurisdiction over the place in which the court is located, a report on Form N-4, in duplicate, listing all declarations of intention and petitions for naturalization filed and all certificates of naturalization issued or spoiled during the preceding month, in accordance with the instructions contained in Form N-4. When at any time during the month the aggregate number of petitions and declarations filed reaches 100 the clerk shall on request of the district director forthwith forward such reports in accordance with the provisions of this section. The report shall be accompanied by all duplicate copies of declarations of intention and applications therefor on Forms N-300; by all duplicates of petitions for naturalization not previously delivered to a representative of the Service, and all duplicates of certificates of

SUPPLEMENT

naturalization with stubs intact. The clerk of court shall show opposite the number of each petition in which the petitioner is exempt from payment of a naturalization fee under section 344 (h) of the Immigration and Nationality Act the letter "M." Opposite the name of each such case and at the bottom of the petition, the notation "No fee" shall be inserted. Void petitions shall be listed separately on Form N-4 and on Form N-7 and so indicated on such forms.

§ 339.3 Relinquishment of naturalization jurisdiction. Whenever a court relinquishes naturalization jurisdiction, the clerk of court shall, within ten days following the date of relinquishment, furnish the district director having administrative jurisdiction over the place in which the court is located, a certified copy of the order of court relinquishing jurisdiction. A representative of the Service shall thereafter examine the naturalization records in the office of the clerk of court and shall bind and lock them. The clerk of court shall return all unused forms and blank certificates of naturalization to the district director with his monthly report on Form N-4.

§ 339.4 Binding of naturalization records. Whenever a volume of petitions for naturalization, applications to take the oath of allegiance, declarations of intention, orders of court, or other documents affecting or relating to the naturalization of persons is completed, it shall be bound and locked by the clerk of court.

§ 339.5 Numbering and indexing and filing of petitions for naturalization and declarations of intention. See §§ 334.3 and 334a.1 of this chapter.

Page 496

PART 340—REVOCATION OF NATURALIZATION

§ 340.11 Investigation and report. Whenever it appears that any grant of naturalization may have been procured by concealment of a material fact or by wilful misrepresentation, the facts shall be reported to the district director having jurisdiction over the naturalized person's last known place of residence. If the district director is satisfied that a *prima facie* showing has been made that grounds for revocation exist, he shall cause an investigation to be made and report the facts in writing to the regional commissioner with a recommendation as to whether revocation proceedings should be instituted. If it appears that naturalization was procured in violation of section 1425 of Title 18 of the United States Code, the facts in regard thereto may be presented by the district director to the appropriate United States Attorney for possible criminal prosecution.

IMMIGRATION AND NATIONALITY ACT

Page 497

PART 341—CERTIFICATES OF CITIZENSHIP

Sec.

- 341.1 Application.
- 341.11 Final disposition—(a) Issuance of certificate.
- 341.13 Notice and examination of applicant and witnesses.
- 341.17 Attorneys.

§ 341.1 *Application.* A person who claims to have derived United States citizenship through the naturalization of a parent or parents or through the naturalization or citizenship of a husband, or who claims to be a citizen at birth outside the United States under the provisions of any of the statutes or acts specified in section 341 of the Act, or who claims to be a citizen at birth outside the United States under the provisions of section 309 (c) of the Act, shall apply for a certificate of citizenship on Form N-600. If the application is granted, a certificate of citizenship shall be issued and the applicant shall, unless he is too young to understand the meaning thereof, take and subscribe to, before an officer or employee of the Service authorized to administer oaths, the oath of renunciation and allegiance prescribed by Part 337 of this chapter. Thereafter, delivery of the certificate shall be made to the applicant, or to his parent or guardian, either personally or by certified mail, and the recipients signed receipt therefor shall be obtained. If the application is denied, the applicant shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

§ 341.11 *Final disposition—(a) Issuance of certificate.* If the district director grants the application, he shall issue the certificate on Form N-560. If the applicant has assumed, or is known by, a name other than his true name, but has not changed his name in accordance with the law of the jurisdiction where he assumed it, the certificate of citizenship shall be issued in the applicant's true name followed by the words "also known as" followed by the assumed name, but in such case the applicant shall be required to sign only his true name on the certificate and on the photographs submitted with his application. The certificate shall be signed by the applicant unless he is a child unable to sign his name, in which case the certificate shall be signed by the parent or guardian, and the signature shall read "(Insert name of parent or guardian) in behalf of (insert name of child)."

§ 341.13 *Notice and examination of applicant and witnesses.* The fifth sentence is amended to read as follows: "If the person or persons through whom the applicant claims citizenship are deceased or otherwise not available, the testimony customarily required of such person

SUPPLEMENT

or persons shall be furnished by qualified witnesses, unless the district director, in his discretion, waives the testimony of such witnesses."

§ 341.17 *Attorneys.* Attorneys or other persons authorized to practice before the Service who represent applicants shall be permitted to be present during the examination of the applicant and the witnesses, to submit briefs, and to review the record either before it is forwarded to the district director or thereafter, and prior to final decision.

Page 500

PART 341a—CERTIFICATE OF CITIZENSHIP—HAWAIIAN ISLANDS

Sec.

- 341a.1 Application.
- 341a.2 Effect of certificate.
- 341a.3 Improper use of certificate.
- 341a.11 Disposition of application.
- 341a.21 Certificate lost, mutilated or destroyed.

§ 341a.1 *Application.* A citizen of the United States who is a bona fide resident of Hawaii, who intends to depart temporarily from that territory, and who desires to establish his United States citizenship for the purpose of facilitating his readmission to the United States, may apply for a Certificate of Citizenship—Hawaiian Islands on Form N-108.

§ 341a.2 *Effect of certificate.* Certificates of Citizenship—Hawaiian Islands, issued pursuant to this part, may be presented to an immigration officer at any part of entry as evidence to prove United States citizenship. The certificate shall not be required to be surrendered to the immigration officer, but may be retained by the proper holder thereof.

§ 341a.3 *Improper use of certificate.* Whenever it is ascertained that a Certificate of Citizenship—Hawaiian Islands is in the possession of a person to whom it was not issued, the certificate shall be taken up and forwarded with a report of the circumstances to the officer in charge at Honolulu, T. H., by the district director having administrative jurisdiction over the place where the certificate was presented. No appeal shall lie from any action taken under this section.

§ 341a.11 *Application: fee.* The third sentence is amended to read as follows: "The application shall be accompanied by a fee of \$12.00, by three photographs of the applicant as prescribed in Part 333 of this chapter, and by documentary evidence or pertinent excerpts therefrom, as described in § 341.12 of this chapter, tending to establish the applicant's citizenship."

IMMIGRATION AND NATIONALITY ACT

§ 341a.11 *Disposition of application*—(a) *Issuance of certificate; delivery.* If the district director grants the application, he shall issue the certificate on Form N-109. The original certificate shall be delivered personally to the applicant, and the duplicate filed in the office of the officer in charge at Honolulu, T. H.

(b) *Application denied.* If the district director denied the application, the applicant shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter (page 291).

§ 341a.21 *Certificate lost, mutilated or destroyed.* A United States citizen whose Certificate of Citizenship—Hawaiian Islands has been lost, mutilated or destroyed may apply for a new certificate in lieu thereof. The application shall be made on Form N-108 and submitted to the officer in charge, Honolulu, T. H., in accordance with the instructions contained therein. The application shall be disposed of in accordance with the provisions of § 341a.11.

Page 502

PART 342—ADMINISTRATIVE CANCELLATION

Part 342 is added to read as follows:

§ 342.1 *Cancellation*—(a) *Notification.* The district director having jurisdiction over a person of the class described in section 342 of the Act shall serve the required statutory notice, indicating therein that such person may, on request, appear in support or in lieu of his written answer, and that he may have present at that time any attorney or other representative qualified under Part 292 of this chapter.

(b) *Failure to answer; admission of allegations.* If a written answer is not filed within the statutory period or the written answer admits the allegations in the notice and a personal appearance is not requested, the district director shall cancel the certificate, document, or record and written notification of the district director's decision, which is not appealable, shall be served on the person.

(c) *Answer filed; personal appearance.* When an answer asserting a defense is filed or a personal appearance is requested, the person shall be given a reasonable time not to exceed 10 days to submit a brief and supporting evidence. If the district director orders the matter terminated, he shall so notify the person in writing. Should the district director find that the certificate, document, or record was obtained through illegality or fraud, he shall order that it be cancelled ab initio and surrendered. Written notification of such action and the reasons therefor shall be given to the person, and he shall

SUPPLEMENT

be informed of his right to appeal in accordance with the provisions of Part 103 of this chapter.

Page 502

PART 343—CERTIFICATE OF NATURALIZATION OR REPATRIATION; PERSONS WHO RESUMED CITIZENSHIP UNDER SECTION 323 OF THE NATIONALITY ACT OF 1940, AS AMENDED, OR SECTION 4 OF THE ACT OF JUNE 29, 1906

Part 343 is amended to read as follows:

§ 343.1 *Application.* A person who lost citizenship of the United States incidental to service in one of the allied armies during World War I or II, or by voting in a political election in a country not at war with the United States during World War II, and who was naturalized under the provisions of section 323 of the Nationality Act of 1940, as amended, or a person who, before January 13, 1941, resumed United States citizenship under the twelfth subdivision of section 4 of the act of June 29, 1906, may obtain a certificate evidencing such citizenship by making application therefor on Form N-580. When the application is approved, a certificate of naturalization or repatriation shall be issued and delivered in person, in the United States only, upon the applicant's signed receipt therefor. If the application is denied, the applicant shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

Page 503

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

Part 343a is amended to read as follows:

§ 343a.1 *Application for replacement of or for new naturalization or citizenship paper—*(a) *Lost, mutilated, or destroyed naturalization papers.* A person whose declaration of intention, certificate of naturalization, citizenship, or repatriation, or whose certified copy of proceedings under the act of June 25, 1936, as amended, or under section 317 (b) of the Nationality Act of 1940, or under section 324 (c) of the Immigration and Nationality Act, or under the provisions of any private law, has been lost, mutilated, or destroyed, shall apply on Form N-565 for a new paper in lieu thereof.

(b) *New certificate in changed name.* A naturalized citizen whose name has been changed after naturalization by order of court or by

IMMIGRATION AND NATIONALITY ACT

marriage shall apply on Form N-565 for a new certificate of naturalization, or of citizenship, in the changed name.

(c) *Disposition.* If an application for a new certificate of naturalization, citizenship, or repatriation is approved, the new certificate shall be issued and delivered in person upon the applicant's signed receipt therefor. When an application for a new declaration of intention is approved, the new declaration of intention shall be issued and the original delivered to the applicant upon his signed receipt therefor. If an application for a new certified copy of the proceedings under the act of June 25, 1936, as amended, or under section 317 (b) of the Nationality Act of 1940, or under section 324 (c) of the Immigration and Nationality Act, or under the provisions of any private law is approved, there shall be issued a certified positive photocopy of the record of the proceedings filed with the Service. When subsequent to the naturalization or repatriation the applicant's name has been changed by marriage, the certification of the positive photocopy shall show both the name in which the proceedings were had and the changed name. The new certified copy shall be personally delivered to the applicant, upon his signed receipt therefor. If the application is denied, the applicant shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

Page 505

PART 343b—SPECIAL CERTIFICATE OF NATURALIZATION FOR RECOGNITION BY A FOREIGN STATE

Sec.

343b.1 Application.

343b.11 Disposition of application.

§ 343b.1 *Application.* A naturalized citizen who desires to obtain recognition as a citizen of the United States by a foreign state shall submit an application on Form N-577.

§ 343b.11 *Disposition of application—(a) Issuance of certificate.* If the application is granted, a special certificate of naturalization on Form N-578 shall be issued by the district director and forwarded to the Secretary of State for transmission to the proper authority of the foreign state.

(b) *Application denied.* If the district director denies the application, the applicant shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter (page 291).

SUPPLEMENT

Page 506

PART 343c—CERTIFICATIONS FROM RECORDS

§ 343c.1 *Application for certification of naturalization record of court or certificate of naturalization or citizenship.* An application for certification of a naturalization record of any court, or of any part thereof, or of any certificate of naturalization, repatriation, or citizenship, under section 343 (e) of the act for use in complying with any statute, Federal or State, or in any judicial proceeding, shall be made on Form N-585.

Page 507

PART 344—FEES COLLECTED BY CLERKS OF COURT

Sec.

- 344.1 Division of the year for accounting for naturalization fees.
- 344.2 Fees in United States courts; remittance.
- 344.3 Fees in other than United States courts; United States District Courts in Alaska; remittance.
- 344.4 Fees in the District Courts at the Virgin Islands and Guam; remittance.
- 344.5 Time for report of and accounting for fees collected.

§ 344.1 *Division of the year for accounting for naturalization fees.* For the purpose of accounting for and reporting naturalization fees quarterly by clerks of courts, the fiscal year shall end on June 30 of any given calendar year and shall be divided as follows: the first quarter shall end September 30; the second quarter ends December 31; the third quarter ends March 31; and the fourth quarter ends June 30.

§ 344.2 *Fees in United States courts; remittance.* All fees collected for declarations of intention and petitions for naturalization by clerks of United States district courts (except in Alaska, and the District Courts of Guam and the Virgin Islands of the United States) shall be forwarded quarterly by a remittance payable to the order of the "Immigration and Naturalization Service, Department of Justice," to the regional commissioner having administrative jurisdiction over the place in which the court is located.

§ 344.3 *Fees in other than United States courts; United States District Courts in Alaska; remittance.* One-half of all fees collected for declarations of intention and petitions for naturalization by clerks of courts other than United States courts, and one-half of all such fees collected by the clerks of the United States district courts in Alaska, up to \$6,000 in any one fiscal year shall be similarly remitted to the regional commissioner in the manner provided in § 344.2. Where the collections during the first quarter of any fiscal year equal or exceed \$1,500, the clerk shall remit all in excess of \$750; and

IMMIGRATION AND NATIONALITY ACT

whenever such collections for the first and second quarters equal or exceed \$3,000, the clerk shall remit all in excess of \$1,500; and whenever the collections for the first three quarters of the fiscal year equal or exceed \$4,500, the clerk shall remit all in excess of \$2,250; and whenever the total collections for any fiscal year equal or exceed \$6,000, the clerk shall remit all fees or moneys so collected in excess of \$3,000.

§ 344.4 Fees in the District Courts at the Virgin Islands and Guam: remittance. All fees collected for declarations of intention and petitions for naturalization by the clerk of the District Court of the Virgin Islands of the United States shall be paid into the Treasury of Virgin Islands. All such fees collected by the clerk of the District Court of Guam shall be paid into the Treasury of Guam. However, such clerks shall report the fees collected to the regional commissioner having administrative jurisdiction over the place in which the court is located, in accordance with § 344.5.

§ 344.5 Time for report of and accounting for fees collected. The accounting for naturalization fees collected and the payment of fees turned over to the regional commissioner as provided in §§ 344.2, 344.3 and 344.4 shall be made on Form N-7 within thirty days from the close of each quarter of each and every fiscal year.

Page 519

PART 475—ADMISSION OF AGRICULTURAL WORKERS

§ 475.22 Immigration inspection at reception centers; authority to admit; hearings before special inquiry officer. (a) An alien who presents a conditional permit, as described in § 475.21, duly noted by an immigration officer at a recruitment center, and who is found to be admissible under this part as an agricultural worker may be so admitted by the examining immigration officer, at which time such officer shall fingerprint the alien:

(1) By placing the rolled impression of the right index finger on the Form I-100a, Alien Laborer's Permit and Identification Card, which shall be prepared in duplicate in each such case; and

(2) By placing complete fingerprints of both hands on one copy of Form AR-4.

(b) The examining immigration officer shall execute the obverse of Form AR-4 and shall place thereon the serial number of Form I-100a and a stamped notation reading "Admitted as agricultural worker"; and shall mail the executed form direct to the Federal Bureau of Investigation, Washington 25, D. C.

SUPPLEMENT

(c) The alien shall be given the Form I-100a bearing his photograph and stating his name, place of birth, and citizenship. Such form shall be duly noted by an immigration officer to show the date, place, and period of the alien's admission to the United States and shall be signed by such officer across the bottom of the photograph, partly on the photograph and partly on the card. Such noted card shall be the sole document required for admission to the United States as an agricultural worker under this part.

(d) In any case in which the examining immigration officer at the reception center is not satisfied that an alien seeking admission under this part is admissible, the alien shall be held for hearing before a special inquiry officer, and the hearing procedure applicable generally to aliens seeking admission to the United States under the immigration laws shall be followed: *Provided, however,* That the case of an alien believed to be inadmissible to the United States under the provisions of paragraph (27), (28), or (29) of section 212 (a) of the Immigration and Nationality Act shall be handled in accordance with the provisions of section 235 (c) of that act and § 235.15 of this chapter.

The fourth sentence of § 475.21 *Recruitment centers; preliminary inspection* is amended to read as follows: "Aliens whose conditional permits have been noted by immigration officers shall be conveyed directly from the recruitment center to a reception center at or near a port of entry under the supervision of representatives of the Secretary of Labor for completion of immigration inspection."

Page 521

PART 40—DIPLOMATIC VISAS UNDER THE IMMIGRATION AND NATIONALITY ACT

Sec.

- 40.1 Definitions.
- 40.2 Officers authorized to issue diplomatic visas.
- 40.3 Types and validity of diplomatic visas.
- 40.4 Classes of aliens eligible to apply for diplomatic visas.
- 40.5 Classes of aliens ineligible to receive diplomatic visas.
- 40.6 Advisory opinions from the Department.
- 40.7 Application for diplomatic visa.
- 40.8 Passport requirement.
- 40.9 Evidence of diplomatic status.
- 40.10 Procedure in issuing diplomatic visas.
- 40.11 Diplomatic visas issued without charge.
- 40.12 Significance of diplomatic visa.
- 40.13 Revocation or cancellation of diplomatic visa.

§ 40.1 *Definitions.* The following definitions, in addition to the pertinent definitions contained in the Immigration and Nationality Act, shall be applicable to this part:

IMMIGRATION AND NATIONALITY ACT

- (a) "Act" means the Immigration and Nationality Act.
- (b) "Department" means the Department of State of the United States of America.
- (c) "Diplomatic visa" means a nonimmigrant visa bearing the title "Diplomatic Visa" and issued to a nonimmigrant in accordance with the regulations contained in Part 41 of this chapter and in this part.
- (d) "Diplomatic passport" means a national passport bearing the title "Diplomatic Passport" and issued by a competent authority of the foreign government to which the bearer owes allegiance.
- (e) "Equivalent of a diplomatic passport" means (1) a national passport, other than a specifically described diplomatic passport, which is issued by a foreign government to which the bearer owes allegiance and which indicates the career diplomatic or consular status of the bearer, the issuing government being one which does not issue diplomatic passports to its career diplomatic and consular officers, or (2) a national passport, other than a specifically described diplomatic passport, which is in the possession of a nonimmigrant who is an accredited official of a foreign government or a member of his immediate family, and who is within the purview of section 212 (d) (8) of the act, or (3) such other passport as may be acceptable to the Secretary of State in individual cases.

§ 40.2 Officers authorized to issue diplomatic visas. (a) A diplomatic or consular officer attached to a diplomatic mission of the United States may issue diplomatic visas if he is authorized to do so by the chief of the mission.

(b) A consular officer assigned to a consular office may issue diplomatic visas if so authorized by the Department or by the chief of the United States diplomatic mission to the foreign country in which such consular office is located.

(c) The Director of the Visa Office of the Department, and such members of his staff as he may designate, are authorized, in their discretion, to issue diplomatic visas to qualified aliens in the United States, who are within one of the classes described in § 40.4, who, if within a nonimmigrant category defined in section 101 (a) (15) (A) or (G) of the act, have been duly notified to the Secretary of State, and who, after a temporary absence, desire to reenter the United States in the nonimmigrant status specified in the visa.

§ 40.3 Types and validity of diplomatic visas—(a) Regular diplomatic visa. A regular diplomatic visa shall be valid for the period indicated therein, as determined under the provisions of § 41.15 of this chapter, and may be used during the period of its validity in making any number of applications for admission into the United

SUPPLEMENT

States: *Provided*, That the status of the bearer as a person entitled to a diplomatic visa is maintained.

(b) *Limited diplomatic visa*. A limited diplomatic visa shall be valid for the period specified therein, as determined under the provisions of § 41.15 of this chapter, and may be used during the period of its validity in making a single application for admission into the United States: *Provided*, That the status of the bearer as a person entitled to a diplomatic visa is maintained.

§ 40.4 *Classes of aliens eligible to apply for diplomatic visas—*

(a) *Regular diplomatic visas*. Aliens of the following classes seeking to enter the United States as nonimmigrants may apply for regular diplomatic visas:

- (1) Heads of states and their alternates;
- (2) Members of a reigning royal family;
- (3) Governors-general, governors, high commissioners, and other similar high administrative or executive officers of a territorial unit, and their alternates;
- (4) Cabinet ministers and their assistants holding executive or administrative positions not inferior to that of the head of a departmental division, and their alternates;
- (5) Presiding officers of chambers of national legislative bodies;
- (6) Justices of the highest national judicial tribunal of a foreign country;
- (7) Officers of the diplomatic service and consular officers of career of a foreign government;
- (8) Diplomatic couriers regularly and professionally employed as such by a foreign government;
- (9) Military, naval, air and other attachés of career, and assistant attachés of career, assigned to a foreign diplomatic mission in the United States or elsewhere;
- (10) Military officers holding a rank not inferior to that of a brigadier general in the United States Army or Air Force and naval officers holding a rank not inferior to that of a rear admiral in the United States Navy;
- (11) Members of a diplomatic mission of a temporary character;
- (12) Officers and representative-members of international bodies of an official nature, other than international organizations so designated by Executive order;
- (13) Representatives of foreign governments, and the staff members of foreign-government delegations, to international organizations so designated by Executive order;

IMMIGRATION AND NATIONALITY ACT

(14) Attendants, servants, and personal employees, as defined in § 41.30 of this chapter, of a principal alien who is within one of the classes described in subparagraphs (1) to (13), inclusive, of this paragraph;

(15) Members of the immediate family of a principal alien who is within one of the classes described in subparagraphs (1) to (13), inclusive, of this paragraph;

(16) Members of the immediate family accompanying or following to join the principal alien who is within one of the classes described in subparagraph (14) of this paragraph; and

(17) Any other alien in whose individual case the Department may specifically authorize the diplomatic or consular officer to accept an application for a regular diplomatic visa.

(b) *Limited diplomatic visas.* Aliens of the following classes seeking to enter the United States as nonimmigrants, if not classifiable within one of the categories specified in paragraph (a) of this section, may apply for limited diplomatic visas:

(1) Subordinate members, including employees, of international bodies of an official nature, other than international organizations so designated by Executive order, who are traveling on official business of such international body;

(2) Subordinate staff members, including employees, of foreign-government delegations to international organizations so designated by Executive order;

(3) Members of delegations proceeding to or from a specific international conference of an official nature;

(4) Members of the immediate family, attendants, servants, and personal employees, accompanying or following to join the principal alien who is within one of the classes described in subparagraphs (1) to (3), inclusive of this paragraph;

(5) Any other alien in whose individual case the Department may specifically authorize the diplomatic or consular officer to accept an application for a limited diplomatic visa.

§ 40.5 *Classes of aliens ineligible to receive diplomatic visas.* Ineligibility to receive a diplomatic visa shall not preclude an alien from applying for a nondiplomatic visa appropriate to his case as an immigrant or as a nonimmigrant. The following classes of aliens shall be considered ineligible to receive diplomatic visas:

(a) Aliens declared by the Department to be individually persona non grata;

SUPPLEMENT

(b) Aliens not in possession of a diplomatic passport or the equivalent of a diplomatic passport, unless such requirement has been waived.

(c) Aliens not within one of the classes described in § 40.4;

(d) Aliens not within one of the classes of nonimmigrants defined in section 101 (a) (15) or section 212 (d) (8) of the act;

(e) Aliens who are ineligible to receive nonimmigrant visas under the immigration laws and regulations, unless the Attorney General shall have authorized their temporary admission under the authority contained in section 212 (d) (3) of the act, if applicable.

§ 40.6 Advisory opinions from the Department. Subject to appropriate instructions from the Department, a diplomatic or consular officer may issue a diplomatic visa, or may refuse to issue a diplomatic visa in the case of an alien eligible for a nondiplomatic nonimmigrant visa, without reference to the Department for an advisory opinion. In the case of an applicant for a diplomatic visa who is found to be ineligible to receive a nonimmigrant visa of any kind, the diplomatic or consular officer shall be governed by the regulations contained in Part 41 of this chapter, and by any special instructions received from the Department, regarding the requirement of advisory opinions.

§ 40.7 Application for diplomatic visa—(a) Form and place of application. Every alien applying for a diplomatic visa shall make application therefor on Form FS-257. The application shall be made at a United States diplomatic mission or at a United States consular office which is authorized to issue diplomatic visas, regardless of the nationality or residence of the applicant.

(b) Separate application for each alien. Every alien applying for a diplomatic visa shall make a separate application therefor. In the case of an alien under fourteen years of age, or an alien physically incapable of making an application, such application may be made by the alien's parent or guardian, and if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, such alien.

(c) Personal appearance. Application for a diplomatic visa shall be made in person unless this requirement is waived in the discretion of the diplomatic or consular officer. If a waiver of personal appearance is granted, the application form shall be completed by the diplomatic or consular officer from available information relating to the alien. No oath or affirmation shall be required in connection with the execution of an application for a diplomatic visa.

(d) Photographs. Except as otherwise provided in this paragraph, every alien who makes application for a diplomatic visa shall furnish

IMMIGRATION AND NATIONALITY ACT

with his application identical photographs of himself in such number as may be required in the discretion of the consular officer. A child under ten years of age shall not be required to furnish photographs unless he is the bearer of a separate passport. The photographs shall reflect a reasonable likeness of the alien as of the time they are furnished, and shall be two inches by two inches in size, unmounted, without head covering, have a light background, and clearly show a full front view of the facial features of the alien. Each copy of the photograph shall be signed by the person making the application with the full name of the alien in such a manner as not to obscure the alien's features. The photograph requirement may be waived in the discretion of the diplomatic or consular officer in the case of any alien granted a diplomatic visa. A signed notation of any such waiver shall be made in the space provided in the application form for the alien's photograph.

(e) *Exemption from fingerprint requirement.* Every alien who is eligible to apply for and who receives a diplomatic visa on a diplomatic passport or on the equivalent of a diplomatic passport shall be exempt from the fingerprint requirement.

§ 40.8 *Passport requirement.* (a) Every alien applying for a diplomatic visa shall be required to present a valid diplomatic passport, or the equivalent thereof, issued by a competent authority of a foreign government recognized *de jure* by the United States, unless such requirement has been waived pursuant to the authority contained in section 212 (d) (4) of the act.

(b) The issuance of a diplomatic visa to an alien within Class A-3 or G-5 as described in § 41.5 of this chapter shall be subject to the condition that the initial period for which the alien may properly be admitted into the United States under the act is to be determined by the Immigration and Naturalization Service after the alien arrives at a port of entry, and the period of stay authorized by that Service may not extend beyond a date which is 6 months prior to the expiration of the alien's passport. An alien whose passport is not valid for the necessary period shall be required to obtain and present such a passport before the diplomatic visa is issued.

§ 40.9 *Evidence of diplomatic status.* A diplomatic or consular officer to whom an alien applies for a diplomatic visa may require any reasonable evidence he deems necessary to establish such alien's eligibility to receive a diplomatic visa. In the case of an alien classifiable within the provisions of section 101 (a) (15) (A) or (G) of the act, the officer to whom application is made shall have discretionary authority to require confirmation of the status of such alien from the foreign office or the international organization concerned.

SUPPLEMENT

§ 40.10 *Procedure in issuing diplomatic visas.* (a) The form of a diplomatic visa shall be the same as the nondiplomatic nonimmigrant visa, except that it may bear the title "Diplomatic Visa" or the word "Diplomatic" shall be stamped diagonally across the lower left hand margin of the visa stamp, in such manner as to be partially covered by the impression seal of the office. The word "Gratis" shall be inserted in the space provided for a fee stamp. The printed title of the signing officer in the visa stamp shall be appropriately amended to show the exact title of the officer who signs the visa.

(b) The diplomatic visa stamp shall be impressed upon the alien's passport. The "V" number of the application of each alien included in the diplomatic visa shall be inserted in the blank space provided therefor in the visa stamp. The visa shall be considered as covering all aliens whose application numbers are so listed and who are included in the passport. In the case of an alien who is a member of the immediate family, or an attendant, servant, or personal employee, of a foreign-government official or employee, or who otherwise derives status from a principal alien who is not accompanying him, the name and position of the principal alien from whom such status is derived, shall be written below the lower margin of the visa stamp in the diplomatic passport.

(c) A diplomatic visa shall show the classification of the bearer to be a nonimmigrant under section 101 (a) (15) of the act. The applicable classification symbol, as specified in § 41.5 of this chapter, shall be inserted in the space provided in the visa stamp. The date of issuance and the date of expiration of the visa shall be inserted in the visa stamp, showing the date, month, and year in that order, the name of the month being spelled out, as "24 December 1952."

(d) The diplomatic or consular officer shall affix his signature, indicate his title, and impress the seal of his office in the spaces provided therefor in the visa stamp. The visaed passport may be delivered to the applicant or his authorized representative together with any other documents required in connection with the applicant's examination at a port of entry in the United States. The executed Form FS-257 shall be retained in the files of the issuing diplomatic or consular office.

§ 40.11 *Diplomatic visas issued without charge.* In accordance with international comity and practice, and upon a basis of reciprocity, no fee shall be charged for the application for a diplomatic visa or for the issuance of such a visa.

§ 40.12 *Significance of diplomatic visa.* An alien to whom a diplomatic visa has been issued shall be entitled to apply at a port of entry

IMMIGRATION AND NATIONALITY ACT

for admission into the United States as a nonimmigrant, and the presentation of such a visa by such alien at a port of entry in the United States shall, in the case of an alien properly classified under the provisions of section 101 (a) (15) (A) or (G) of the act, or in the case of an alien who is an accredited official of a foreign government in immediate and continuous transit through the United States, as referred to in section 212 (d) (8) of the act, and who is classified under the provisions of section 101 (a) (15) (C) of the act, be considered conclusive evidence of the proper classification of the bearer.

§ 40.13 *Revocation or cancellation of diplomatic visa*—(a) *Revocation*. Diplomatic and consular officers are authorized to revoke ab initio a diplomatic visa in any case in which it is found that:

- (1) The visa was procured by fraud or misrepresentation, or by other illegal means; or
- (2) The alien was ineligible ab initio to receive the diplomatic visa under the immigration laws and regulations in effect at the time it was issued.

(b) *Notice of revocation*. Notice of the revocation of a diplomatic visa shall, if practicable, be given to the alien at his last known address prior to his departure for the United States, and to the master, commanding officer, agent, owner, charterer, or consignee, of the carrier or transportation line on which the alien is known or believed to intend to travel to the United States. Such notice shall also be communicated to the Department for transmission to the Attorney General, and to the diplomatic or consular office which issued the visa if the revocation was effected by any other diplomatic or consular office upon instruction from the issuing office or the Department. Upon receiving notice of revocation of his diplomatic visa, the alien shall be required to present his passport at the office indicated in the notice for appropriate notation on the visa stamped therein. The word "Revoked" shall be written plainly on the face of the visa stamp by the revoking officer who shall sign and date such notation, but the revocation shall be effective and shall invalidate the visa from the date of issuance even in the absence of such notation. If it is not practicable to give the alien notice of revocation prior to his departure for the United States, a full report of the facts in the case shall be submitted promptly to the Department.

(c) *Cancellation*. Diplomatic and consular officers are authorized to cancel in futuro a diplomatic visa in any case in which it is found that the alien to whom the visa was issued is no longer eligible for such visa. An alien shall be considered as no longer eligible for a diplomatic visa if he ceases, by reason of circumstances arising after the visa was issued, to have the qualifications necessary to obtain such

SUPPLEMENT

a visa, or if another visa of any kind is issued to him. In any such case the alien shall be required to present his passport to the diplomatic or consular officer for cancellation of the diplomatic visa stamped therein. Such cancellation shall be effected by writing the word "Canceled" plainly on the face of the visa stamp. The cancelling officer shall sign and date his notation of cancellation. A report regarding each cancellation of a diplomatic visa shall be forwarded promptly to the Department by the cancelling officer.

(d) *Record of revocation or cancellation.* Upon the revocation or cancellation of a diplomatic visa, appropriate notation of the action taken, including a statement of the reason therefor, shall be made on Form FS-257 or on an appended memorandum, and if the revocation or cancellation of the visa is effected at other than the issuing office, a report of the action taken shall be transmitted to the issuing office.

Page 527

PART 41—DOCUMENTATION OF NONIMMIGRANT ALIENS UNDER THE IMMIGRATION AND NATIONALITY ACT

Sec.

41.1 Definitions.

- DOCUMENTATION OF NATIONALS, CLAIMANT NATIONALS, AND FORMER NATIONALS
- 41.2 National of the United States.
- 41.3 Claimant to United States nationality.
- 41.4 Former national of the United States.

CLASSIFICATION OF NONIMMIGRANTS FOR PURPOSES OF DOCUMENTATION

- 41.5 Classification symbols.

DOCUMENTATION NOT REQUIRED FOR CERTAIN NONIMMIGRANTS

- 41.6 Nonimmigrants not required to present passports, visas, or border-crossing identification cards.
- 41.7 Nonimmigrants required to present passports but not visas or border-crossing identification cards.
- 41.8 Nonimmigrants required to present visas or border-crossing identification cards but not passports.

NONIMMIGRANT VISA APPLICATIONS

- 41.9 Application for nonimmigrant visas.
- 41.10 Documents required in connection with application for nonimmigrant visa; medical examination; police certificates.

ISSUANCE OF NONIMMIGRANT VISAS

- 41.11 Authority to issue nonimmigrant visas in the Department.
- 41.12 Procedure in issuing nonimmigrant visa.
- 41.13 More than one person included in nonimmigrant visa.
- 41.14 Fees for nonimmigrant visas.
- 41.15 Validity of nonimmigrant visa.
- 41.16 Revalidation of nonimmigrant visa.

REFUSAL AND REVOCATION

- 41.17 Refusal of nonimmigrant documentation.
- 41.18 Revocation and invalidation of nonimmigrant visa and other nonimmigrant documentation.

IMMIGRATION AND NATIONALITY ACT

REGISTRATION AND FINGERPRINTING

Sec.

41.19 Registration and fingerprinting of nonimmigrants.

BORDER-CROSSING IDENTIFICATION CARDS

41.20 Nonresident aliens' border-crossing identification cards.

41.21 Transfer of visa to new passport.

41.22 Nonimmigrants exempted by law or treaty from the requirement of passports, visas, and border-crossing identification cards.

ACCREDITED FOREIGN-GOVERNMENT OFFICIALS

41.30 Officials of foreign governments.

41.31 Official or representative of foreign government not recognized by the United States.

41.32 Procedure in issuing visa to foreign-government official or employee.

41.33 Evidence of official status.

41.34 Significance of nonimmigrant visa in official cases.

OFFICIAL VISAS

41.35 Classes of aliens eligible to apply for official visas.

TEMPORARY VISITORS

41.40 Temporary visitors.

41.41 Exchange visitors.

41.42 Burden of proof and evidence of temporary visitor status.

TRANSIT ALIENS

41.50 Transit aliens.

41.51 Burden of proof and evidence of transit status.

41.52 Certain aliens in transit to United Nations.

41.53 Accredited officials in transit through the United States.

CREWMEN

41.60 Crewmen.

41.61 Burden of proof and evidence of crewman status.

41.62 Foreign-government official crewmen.

41.63 Procedure in issuing individual visas to crewmen.

41.64 Visa requirement for nonimmigrant crewmen.

41.65 Procedures applicable to crew-list visas.

41.66 Preparation of crew list for visa purposes.

41.67 Refusal of crew-list visas.

TREATY ALIENS

41.70 Treaty traders.

41.71 Burden of proof and evidence of treaty-trader status.

41.75 Treaty investors.

41.76 Burden of proof and evidence of treaty-investor status.

STUDENTS

41.80 Students.

41.81 Burden of proof and evidence of student status.

INTERNATIONAL ORGANIZATION ALIENS

41.90 Aliens coming to international organizations.

41.91 Evidence of status as representative to, or officer or employee of, international organization.

41.92 Procedure in issuing visa to representative to, or officer or employee of, international organization.

SUPPLEMENT

TEMPORARY WORKERS

Sec.

- 41.100 Temporary workers and trainees.
- 41.101 Alien servant or personal employee of member of the Foreign Service of the United States, or of other citizen or resident of the United States.
- 41.102 Former exchange visitors.

NEWS REPORTERS

- 41.110 Representatives of foreign press, radio, film, or other information media.
- 41.111 Burden of proof and evidence of status as representative of foreign information media.

TEMPORARY ADMISSION OF EXCLUDABLE ALIENS

- 41.150 Procedure in recommending temporary admission of excludable aliens.

§ 41.1 *Definitions.* The following definitions, in addition to the pertinent definitions contained in the Immigration and Nationality Act, shall be applicable to this part:

- (a) "Act" means the Immigration and Nationality Act.
- (b) "Affirmation" means a verification in confirmation of truth, in lieu of a sworn statement, by a person who has conscientious scruples against taking an oath.
- (c) "Consular officer," as defined in section 101 (a) (9) of the act, shall include the District Administrators of the Trust Territory of the Pacific Islands, and the Naval Administrator, United States Naval Administration Unit Saipan District, hereby designated as consular officers for the purpose of issuing nonimmigrant visas.
- (d) "Department" means the Department of State of the United States of America.
- (e) "Passport" as defined in section 101 (a) (30) of the act shall not be considered as limited to a national passport, but shall be considered as including any other document issued by a competent authority, which shows the bearer's origin, identity, and nationality if any, and which is valid for the entry of the bearer into a foreign country. The term "passport" shall not be considered as limited to a single document but may consist of two or more documents which, when considered together, fulfill the requirements of a passport as defined in section 101 (a) (30) of the act: *Provided*, That written permission to enter a foreign country shall be considered as fulfilling one of such requirements if it is clearly valid for such purpose and specifies no conditions to such validity for the alien's entry into a foreign country.
- (f) "Port of entry" means a port or place designated by the Attorney General or the Commissioner of Immigration and Naturalization at which an alien may apply for admission into the United States.

IMMIGRATION AND NATIONALITY ACT
DOCUMENTATION OF NATIONALS, CLAIMANT NATIONALS AND
FORMER NATIONALS

§ 41.2 *National of the United States.* A national of the United States shall not be issued a visa or other documentation as an alien for entry into the United States.

§ 41.3 *Claimant to United States nationality.* A person whose case fulfills the conditions of section 360 (b) of the act and who continues to claim that he is a national of the United States may apply for a certificate of identity as provided in section 360 (b) of the act. (See §§ 50.24-50.40 of this chapter.)

§ 41.4 *Former national of the United States.* A former national of the United States who seeks to enter the United States shall be required to comply with the documentary requirements applicable to aliens under the act.

CLASSIFICATION OF NONIMMIGRANTS FOR PURPOSES OF DOCUMENTATION

§ 41.5 *Classification symbols.* A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an appropriate symbol to be inserted by the consular officer in the space provided in the visa stamp to show the classification of the alien as a nonimmigrant under the provisions of section 101 (a) (15) of the act. The following symbols shall be used:

Class	Citation	Symbol to be inserted in visa
Ambassador, public minister, career diplomatic or consular officer, and members of immediate family	101 (a) (15) (A) (i)	A-1
Other foreign-government official or employee, and members of immediate family	101 (a) (15) (A) (ii)	A-2
Attendant, servant, or personal employee of A-1 and A-2 classes, and members of immediate family	101 (a) (15) (A) (iii)	A-3
Temporary visitor for business	101 (a) (15) (B)	B-1
Temporary visitor for pleasure	101 (a) (15) (B)	B-2
Alien in transit	101 (a) (15) (C)	C-1
Alien in transit to United Nations headquarters district under § 11 (3), (4), or (5) of the Headquarters Agreement.	101 (a) (15) (C)	C-2
Foreign-government official, members of immediate family, attendant, servant, or personal employee, in transit	212 (d) (8)	C-3
Crewman (seaman or airman)	101 (a) (15) (D)	D
Treaty merchant, spouse and children	101 (a) (15) (E) (i)	E-1
Treaty investor, spouse and children	101 (a) (15) (E) (ii)	E-2
Exchange visitor	101 (a) (15) and 402 (f)	EX
Student	101 (a) (15) (F)	F

SUPPLEMENT

Class	Citation	Symbol to be inserted in visa
Principal resident representative of recognized foreign member government to international organization, his staff, and members of immediate family	101 (a) (15) (G) (i)	G-1
Other representative of recognized foreign member government to international organization, and members of immediate family	101 (a) (15) (G) (ii)	G-2
Representative of nonrecognized or non-member foreign government to international organization, and members of immediate family	101 (a) (15) (G) (iii)	G-3
International organization officer or employee, and members of immediate family	101 (a) (15) (G) (iv)	G-4
Attendant, servant, or personal employee of G-1, G-2, G-3, and G-4 classes, and members of immediate family	101 (a) (15) (G) (v)	G-5
Temporary worker of distinguished merit and ability	101 (a) (15) (H) (i)	H-1
Other temporary worker, skilled or unskilled	101 (a) (15) (H) (ii)	H-2
Industrial trainee	101 (a) (15) (H) (iii)	H-3
Representative of foreign information media, spouse and children	101 (a) (15) (I)	I
Principal permanent representative of Member State to NATO and resident members of his official staff; Secretary General, Deputy Secretary General, and Executive Secretary of NATO; Coordinator of North Atlantic Defense Production; other permanent NATO officials of similar rank; and members of immediate family	Art. 12, 5 UST 1094	NATO-1
	Art. 20, 5 UST 1098	
Other representative of Member State to NATO Council or any of its subsidiary bodies, including representatives, advisers, and technical experts of delegations, and members of immediate family	Art. 13, 5 UST 1094	NATO-2
Official clerical staff accompanying a representative of Member State to NATO, its Council or subsidiary bodies, and members of immediate family	Art. 14, 5 UST 1096	NATO-3
Officials of NATO, and members of immediate family	Art. 18, 5 UST 1098	NATO-4
Experts, other than officials classifiable under the symbol NATO-4, employed on missions on behalf of NATO	Art. 21, 5 UST 1100	NATO-5
Members of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the status of International Military Headquarters set up pursuant to the North Atlantic Treaty, and their dependents	Art. 3, 5 UST 877	NATO-6

IMMIGRATION AND NATIONALITY ACT

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANT ALIENS UNDER THE IMMIGRATION AND NATIONALITY ACT NONIMMIGRANT DOCUMENTARY WAIVERS

§ 41.6 *Waivers of documentary requirements for nonimmigrants.* The provisions of section 212 (a) (26) of the act relating to the requirements of valid passports and visas for nonimmigrants are waived by the Secretary of State and the Attorney General, acting jointly, in pursuance of the authority contained in section 212 (d) (4) of the act under the conditions specified for the following classes:

(a) *Canadian nationals and British subjects.* A visa shall not in any case be required of a Canadian national or British subject who has his residence in Canada or Bermuda, and a passport shall not be required of such a national or subject except after a visit outside of the Western Hemisphere. A visa shall not be required of a British subject who has his residence in and arrives directly from, the Cayman Islands and who presents a certificate from the Clerk of Court of the Cayman Islands stating what, if anything, the Court's criminal records show concerning such subject, and a certificate from the Office of Commissioner of the Cayman Islands stating what, if anything, its records show with respect to such subject's political associations or affiliations.

(b) *British, French and Netherlands nationals.* A visa shall not be required of a British, French or Netherlands national who has his residence in British, French or Netherlands territory, respectively, in the adjacent islands of the Caribbean area and who is proceeding to Puerto Rico or the Virgin Islands of the United States or who is proceeding to the United States as an agricultural worker.

(c) *Mexican nationals.* A visa and a passport shall not be required of a Mexican national who is a military or civilian official or employee of the Mexican national, state, or municipal government, or of a member of the family of any such official or employee; or is in possession of a border crossing card on Form I-186 and is applying for admission in accordance with the terms thereon and the provisions of § 41.20 and 8 CFR 212.6. A visa shall not be required of a Mexican national who is a crewman employed on an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States; or is proceeding to the United States as an agricultural worker pursuant to Title V of the Agricultural Act of 1949, as amended.

(d) *Cuban nationals.* A visa and a passport shall not be required of a Cuban national who is an official of the Cuban immigration service; or is a crewman serving on board a Cuban military or naval aircraft. A visa shall not be required of a Cuban national who is a

SUPPLEMENT

crewman employed on an aircraft belonging to a Cuban company authorized to engage in commercial transportation into the United States.

(e) *Direct transits*—(1) *Aliens in bonded transit*. A visa and a passport shall not be required of an alien, other than an alien who is a citizen of Albania, Bulgaria, Communist-controlled China ("Peoples Republic of China"), Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, North Korea ("Peoples Democratic Republic of Korea"), North Vietnam (Viet Minh), Poland, Rumania, the Soviet Zone of Germany ("German Democratic Republic"), or the Union of Soviet Socialist Republics, and resident of one of said countries, who is being transported in immediate and continuous transit through the United States in accordance with the terms of a contract, including a bonding agreement, entered into between the transportation line and the Attorney General under the provisions of section 238 (d) of the Act, to insure such immediate and continuous transit through, and departure from, the United States en route to a specifically designated foreign country: *Provided*, That at all times such alien is not aboard an aircraft which is in flight through the United States he shall be in the custody of an officer of the United States or, if the Attorney General finds that such custody is not practicable, in such other custody as may be approved by the Attorney General.

(2) *Foreign government officials in transit*. If an alien is of the class described in section 212 (d) (8) of the Act only a valid unexpired visa and a travel document which is valid for entry into a foreign country for at least thirty days from the date of his application for admission into the United States shall be required.

(f) *Unforeseen emergency*. A visa and a passport shall not be required of a nonimmigrant who, either prior to his embarkation at a foreign port or place or at the time of arrival at a port of entry in the United States, satisfies the district director of the Immigration and Naturalization Service in charge of the port of entry, after consultation with and concurrence by the Director of the Visa Office of the Department of State, that, because of an unforeseen emergency, he was unable to obtain the required documents.

CERTAIN FOREIGN PASSPORTS VALIDITY

Under the provisions of section 212 (a) (26) of the Immigration and Nationality Act, a nonimmigrant alien who makes application for a visa or for admission into the United States is required to be in possession of a passport which is valid for a minimum period of six months from the date of expiration of the initial period of his admis-

IMMIGRATION AND NATIONALITY ACT

sion into the United States or his contemplated initial period of stay authorizing him to return to the country from which he came or to proceed to and enter some other country during such period. By reason of the foregoing requirement, certain foreign governments have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign-issuing authority for a period of six months beyond the expiration date specified in the passport. These agreements have the effect of extending the validity period of the foreign passport an additional six months notwithstanding the expiration date indicated in the passport. Notice is hereby given that the following foreign governments have concluded such an agreement with the Government of the United States:

Austria (Reisepass only), Bolivia, Brazil, Canada, Ceylon, Chile, Colombia, Cuba, Dominican Republic, Ethiopia, Germany (Reisepass only), Greece (issued in Greece only), Guatemala, Honduras, Iceland, India, Ireland, Israel, Mexico, Monaco, The Netherlands, Pakistan, Portugal, Spain, Switzerland, and United Kingdom.

NONIMMIGRANT VISA APPLICATIONS

§ 41.9 Application for nonimmigrant visas—(a) Application form. Every alien applying at a diplomatic mission or a consular office for a nonimmigrant visa shall make application therefor on Form FS-257. In any case in which the consular officer believes that the information provided in Form FS-257 is inadequate to determine the alien's eligibility to receive a nonimmigrant visa, he may, in his discretion, require the submission of such additional information as may be necessary to a determination of the alien's eligibility to receive a nonimmigrant visa. The provisions of section 222 (c) of the act which require every alien applying for a nonimmigrant visa and alien registration to state his race and ethnic classification in the application shall not be construed as pertaining to the alien's religion.

(b) Aliens required to make separate application. Except as provided in § 41.11 relating to the issuance of visas to certain nonimmigrants in the United States, or as provided in § 41.65 relating to crew-list visas, every alien shall make a separate application for a nonimmigrant visa. In the case of an alien under 14 years of age, or one physically incapable of making an application, such application may be made by the alien's parent or guardian, and, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, such alien.

(c) Personal appearance. Except as otherwise provided in this paragraph, every alien who makes application for a nonimmigrant

SUPPLEMENT

visa shall be required to appear in person before a consular officer to execute Form 257. The requirement of personal appearance may be waived in the discretion of the consular officer in the case of any alien (1) who is within a class of nonimmigrants described in section 101 (a) (15) (A) or section 101 (a) (15) (G) of the act, (2) who are eligible to receive diplomatic visas, (3) who is within a class of nonimmigrants classifiable under the visa symbol NATO-1, NATO-2, NATO-3 or NATO-4, or (4) who is a child under ten years of age. If a waiver of personal appearance is granted, the application form shall be completed by the consular officer from available information relating to the alien.

(d) *Photographs.* Except as otherwise provided in this paragraph, every alien who makes application for a nonimmigrant visa shall furnish with his application identical photographs of himself in such number as may be required in the discretion of the consular officer. A child under ten years of age shall not be required to furnish photographs unless he is the bearer of a separate passport. The photographs shall reflect a reasonable likeness of the alien as of the time they are furnished, and shall be two by two inches in size, unmounted, without head covering, have a light background, and clearly show a full front view of the facial features of the alien. Each copy of the photograph shall be signed by the person making the application with the full name of the alien in such a manner as not to obscure the alien's features. The photograph requirement may be waived in the discretion of the consular officer in the case of any alien (1) who is within a class of nonimmigrants described in section 101 (a) (15) (A) or section 101 (a) (15) (G) of the act, (2) who is within a class of nonimmigrants classifiable under the visa symbol NATO-1, NATO-2, NATO-3, or NATO-4, or (3) who is granted a diplomatic visa. A signed notation of any such waiver shall be made in the space provided in the application form for the alien's photograph.

(e) *Place of application.* With the exception of certain aliens who are in the United States and who may be issued nonimmigrant visas under the provisions of § 41.11, every alien applying for a nonimmigrant visa shall make application at a United States consular office in the consular district in which he has his residence: *Provided*, That a consular officer shall at the direction of the Secretary of State, or may in his discretion, accept an application for a nonimmigrant visa from an alien having no residence in the consular district if such alien is physically present therein.

(f) *Fee receipt notation.* The receipt of the prescribed fee, if any, for the furnishing and verification of application Form FS-257 shall be evidenced by inserting in the appropriate spaces on the reverse

IMMIGRATION AND NATIONALITY ACT

of the application form the (1) service number, (2) tariff item number, (3) fee paid in United States dollars, and (4) local currency equivalent. If no fee is prescribed for the rendering of such service, the word "gratis" shall be inserted in the space marked "Fee paid: U. S. \$_____."

(g) *Signature and seal.* Form 257 shall be signed by or on behalf of the applicant in the appropriate spaces provided therefor and in the presence of the consular officer. The application shall be sworn to or affirmed by the applicant before the consular officer who shall then sign such application and impress the seal of his office in the spaces provided in the application.

§ 41.10 *Documents required in connection with application for nonimmigrant visa; medical examination; police certificates*—(a) *Authority to require documents.* Every alien applying for a nonimmigrant visa shall furnish in duplicate if the consular officer in his discretion so requires, with his application a certified copy of each documents pertaining to him which may be considered by the consular officer to be necessary to a determination of the alien's eligibility to receive a nonimmigrant visa.

(b) *Unobtainable documents.* In the event an alien applying for a nonimmigrant visa establishes to the satisfaction of the consular officer that any document or record required under the authority of this section is unobtainable, the consular officer may permit the alien to submit, in lieu of such document or record, other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain. A document or other record shall be considered "unobtainable" if it cannot be procured without causing the applicant or a member of his family actual hardship other than normal delay and inconvenience.

(c) *Medical examination of nonimmigrants.* An alien applying for a nonimmigrant visa shall be required to present in duplicate a medical certificate from a reputable and competent physician selected by the alien from a panel of such physicians approved by the consular officer, or to be examined by a doctor of the United States Public Health Service, if he is coming from an area or in a status which indicates that a medical examination is advisable, or if the consular officer otherwise has reason to believe that such certificate or examination would disclose that the alien is ineligible to receive the visa.

(d) *Police certificates.* An alien applying for a nonimmigrant visa shall be required to present a police certificate if the consular officer has reason to believe that the alien has a police or criminal record. If required to present a police certificate, the alien shall furnish in duplicate with his application a certification by the appropriate police

SUPPLEMENT

or other authorities stating what their records show concerning him: *Provided*, That the provisions of this paragraph shall not apply in the case of any alien (1) who is within a class of nonimmigrants described in section 101 (a) (15) (A) (i) or (ii), or section (a) (15) (G) (i), (ii), (iii), or (iv), or section 212 (d) (8), of the act, or (2) who is within a class of nonimmigrants classifiable under the visa symbol NATO-1, NATO-2, NATO-3, or NATO-4.

(e) *Certificates as part of application.* If a medical examination or a police certificate is required of a nonimmigrant alien as provided in this section, the medical notification showing the results of the examination, or the police certificate, or both, shall be considered papers submitted with the alien's application within the meaning of section 221 (g) (1) of the act. The duplicate of such notification or certificate, or both, shall be enclosed in a sealed envelope and delivered to the alien for presentation at the port of entry.

(f) *Authority to elicit additional information.* A consular officer may, in his discretion, interrogate any alien applying for a nonimmigrant visa and require him to answer questions pertaining to his police or criminal record, or any other matter which is deemed material to a determination of the alien's eligibility to receive a nonimmigrant visa. Such additional statements shall become a part of the visa application and shall be covered by the oath of the applicant as administered by the consular officer.

(g) *Disposition of supporting documents.* (1) When issuing a nonimmigrant visa to any alien, the consular officer shall return to the alien for presentation to the immigration authorities at the port of entry the original of all supporting documents furnished by the alien with his application, except police and medical certificates which shall be disposed of as provided in paragraph (e) of this section. The duplicate of each such document shall be retained at the consular office in the discretion of the consular officer or returned to the alien. If the duplicate is returned to the visa recipient an appropriate notation to that effect shall be made on the index card which contains the record of visa issuance.

(2) When refusing a nonimmigrant visa to any alien, a consular officer may return to such alien the original of all supporting documents furnished by the alien with his application. The duplicate of each document upon which the visa refusal is based and the duplicate of each document which indicates a possible ground of ineligibility to receive a visa whether or not related to the ground of refusal shall be retained at the consular office and filed with the memorandum of refusal. Duplicates of other documents may be returned to the alien in the consular officer's discretion.

IMMIGRATION AND NATIONALITY ACT

ISSUANCE OF NONIMMIGRANT VISAS

Section 41.11 *Authority to issue nonimmigrant visas in the Department*, is amended to read as follows:

§ 41.11 Authority to issue nonimmigrant visas in the Department. The Director of the Visa Office of the Department and such members of his staff as he may designate are authorized, in their discretion, to issue nonimmigrant visas, or to revalidate nonimmigrant visas previously issued, to qualified aliens in the United States (a) who are within a class of nonimmigrants described in section 101 (a) (15) (A), section 101 (a) (15) (G), or section 101 (a) (15) (I) of the Act, or within a class of nonimmigrants classifiable under the visa symbol NATO-1, NATO-2, NATO-3, or NATO-4, (b) who have been duly notified to the Secretary of State in such nonimmigrant status, or who, in cases of aliens classifiable under section 101 (a) (15) (I), are bearers of passports containing a used I visa which was, on a basis of reciprocity, limited in validity to a single application for admission into the United States, or an A or G visa, and who have been duly accredited by a foreign information medium, and (c) who, after a temporary absence, desire to reenter the United States in the nonimmigrant status specified in the visa.

§ 41.12 Procedure in issuing nonimmigrant visa—(a) Visa evidenced by stamp in passport. Except as hereinafter provided, the issuance of a nonimmigrant visa shall be evidenced by a stamp placed in the alien's passport and properly executed by the consular officer. The appropriate symbol, as prescribed in § 41.5, showing the classification of the nonimmigrant under section 101 (a) (15) of the act shall be inserted in the visa stamp. In the case of an alien whose passport was issued by a government not recognized de jure by the United States or in the case of an alien for whom the passport requirement has been waived, the visa stamp shall be impressed on a sheet of the issuing office's official stationery to which a photograph of the alien shall be securely attached. The impression seal of the issuing office shall be impressed on the stationery so as to partially cover the photograph. No seal, signature, stamp, or notation of any kind shall be placed in a passport issued by a foreign government not recognized de jure by the United States.

(b) Form of nonimmigrant visa stamp. The nonimmigrant visa stamp shall be in the following form or in such other form as may be prescribed by the Department:

SUPPLEMENT

(Title of office)

[Seal]

(Location)

NONIMMIGRANT VISA ()

No. _____ Date _____

To: _____

Valid for _____ applications for admission into the United States if presented before _____

Consul

(c) *Notations on visa.* The V-number of the application of each alien included in a nonimmigrant visa shall be inserted in the space provided therefor in the visa stamp. If the visa is being issued upon the basis of a petition filed with and approved by the Attorney General, in the case of a nonimmigrant under the provisions of section 101 (a) (15) (H) of the act, the number and date of approval of the petition shall be noted in the visa stamp, and the period for which the alien's admission has been authorized shall be noted immediately below the visa stamp.

(d) *Period of validity.* If a nonimmigrant visa is issued for an unlimited number of applications for admission within the period of validity, the word "Unlimited" shall be inserted in the space provided in the visa stamp. Otherwise a specific number shall be inserted. The date of issuance and the date of expiration of the visa shall be inserted at the proper places in the visa stamp and shall show the day, month, and year in that order, the name of the month being spelled out, as "24 December 1952."

(e) *Fee receipt notation.* The receipt of the prescribed fee, if any, for the issuance of a nonimmigrant visa shall be evidenced by a rubber-stamped or typed notation properly completed in the same form as provided in § 41.9 (f), and placed within the visa stamp in the blank space above the line provided for the consular officer's signature. If no fee is prescribed for the issuance of a nonimmigrant visa in the particular case, the word "gratis" shall be inserted in the space mark "Fee Paid: U. S. \$_____."

(f) *Signature and seal.* The consular officer who issues a nonimmigrant visa shall affix his signature, indicate his title, and impress the seal of his office in the spaces provided in the visa stamp.

IMMIGRATION AND NATIONALITY ACT

(g) *Disposition of Form FS-257.* In issuing a nonimmigrant visa the consular officer shall deliver the visaed passport or, where applicable, the visaed sheet of official stationery to the alien together with any other documents required in connection with the alien's examination at a port of entry in the United States. The executed Form FS-257 and any additional statements furnished by the alien in accordance with § 41.10 (f) shall be retained in the consular files.

§ 41.13 *More than one person included in nonimmigrant visa.* A single nonimmigrant visa may be issued to include more than one eligible alien, provided each alien executes a separate application and the V-number of each application is inserted in the space provided in the visa stamp. In such a case, the visa fee to be collected shall be equal to the total of the fees prescribed by the Secretary of State in accordance with the provisions of section 281 of the act and § 41.14.

§ 41.14 *Fees for nonimmigrant visas.* (a) The fees for the furnishing and verification of applications for visas made by nonimmigrant nationals or stateless residents of each foreign country and for the issuance of visas to such nationals or residents shall be collected in the same amounts as are prescribed by the Secretary of State and shall correspond, as nearly as practicable, to the total of all similar visa, entry, residence, or other fees, taxes or charges assessed or levied against nationals of the United States, in connection with their entry or sojourn, by the foreign countries of which such nonimmigrants are nationals or stateless residents.

(b) *Aliens exempted from nonimmigrant visa fees.* Upon a basis of reciprocity, or as provided in section 13 (a) of the Headquarters Agreement with the United Nations (61 Stat. 716), no fee shall be collected for the application for, or the issuance of, a nonimmigrant visa to an alien of any of the following classes:

- (1) Nonimmigrants described in section 101 (a) (15) (A) of the act;
- (2) Nonimmigrants described in section 101 (a) (15) (G) of the act;
- (3) Nonimmigrants who are issued diplomatic visas under the provisions of Part 40 of this chapter;
- (4) Persons entitled to pass in transit to the United Nations Headquarters District under the provisions of section 11 (3), 11 (4), or 11 (5) of the Headquarters Agreement and who are issued C-2 visas as nonimmigrants under the provisions of section 101 (a) (15) (C) of the act. An alien in this category, if issued a visa as a B-1 or B-2 nonimmigrant, for example, under the provisions of section 101 (a)

(15) (B) of the act when he is qualified to receive such a visa, shall pay the fee, if any, prescribed for aliens of the same nationality or stateless resident status.

(c) A fee collected for an application for, or the issuance of, a nonimmigrant visa, shall not be refunded without specific authorization from the Department.

§ 41.15 *Validity of nonimmigrant visa.* (a) The period of validity of a nonimmigrant visa shall date from the time of issuance and shall relate only to the period during which the alien to whom the visa was issued may use it in making application for admission into the United States and shall have no relation to the period of time he may be authorized to stay or remain in the United States, if, upon his arrival at a port of entry, he is admitted into the United States by the immigration authorities. Except as provided in paragraphs (c) and (d) of this section, the bearer of a nonimmigrant visa may, within the period of its validity, make any number of applications for admission into the United States: *Provided*, That the passport of the bearer continues to be valid for the necessary period, and his nonimmigrant status shall not have changed.

(b) Except as is provided in paragraphs (c) and (d) of this section, every nonimmigrant visa shall be valid for a period of twelve (12) months, or for a period not exceeding forty-eight months in the case of an alien who is a national or stateless resident of a foreign country whose government issues visas to United States nationals of a similar class valid for an equivalent period or whose government does not require visas of United States nationals of a similar class visiting such country.

(c) A nonimmigrant visa may, in consideration of reciprocal treatment accorded nationals of the United States within a similar class by the government of the country of which the alien is a national or stateless resident, or for other valid reasons, be issued valid for (1) a period of validity which is less than the time specified in paragraph (b) of this section, (2) a limited number of applications for admission within the period of the validity of the visa, or (3) application for admission at a specified port or specified ports of entry in the United States.

(d) The validity of a nonimmigrant visa issued to an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District under the provisions of section 11 (3), 11 (4), or 11 (5) of the United Nations Headquarters Agreement (61 Stat. 758), and whose admission is authorized by the Attorney General under the provisions of section 212 (d) (3) of the act despite the alien's inadmissibility under the provisions of section 212 (a) (28)

IMMIGRATION AND NATIONALITY ACT

of the act, shall be limited to a single application for admission within such period as, in the opinion of the consular officer, is reasonable to permit the bearer to travel to the United States.

§ 41.16 Revalidation of nonimmigrant visa. (a) A nonimmigrant visa issued to a nonimmigrant under the provisions of section 101 (a) (15) of the act may be revalidated in the same classification at the original visa-issuing office or other consular office: *Provided*, That (1) such visa was originally issued for less than the maximum period of forty-eight months validity or for less than multiple applications for admission, or both; (2) such visa is about to expire, or expired less than twelve months prior to the application for revalidation, or has become invalid by reason of having been used for the number of applications for admission specified therein; and (3) the consular officer is satisfied that the alien is a bona fide nonimmigrant and is otherwise eligible to receive such a nonimmigrant visa, including the possession of a valid passport, if required.

(b) A formal application for the revalidation of a nonimmigrant visa need not be applied. The consular officer may, in his discretion, waive the personal appearance of the alien concerned if satisfied that the alien is physically present in the consular district. A nonimmigrant visa may be revalidated any number of times but not to exceed a total of forty-eight months from the date of its original issuance.

(c) In revalidating a nonimmigrant visa, the consular officer shall follow the procedure prescribed in § 41.12, except that a new Form 257 need not be executed. The visa stamp shall be impressed in the alien's passport and all pertinent data, including the V-number, contained in the original visa shall be transferred to the revalidated visa. The word "Revalidated" shall be inserted above the words "Nonimmigrant Visa" in the visa stamp or inserted diagonally across the face of the visa. Following the revalidation of a nonimmigrant visa, an appropriate notation thereof, regardless of where the revalidation occurs, shall be made on the pertinent index card on file at the original visa-issuing office.

(d) The period of validity for which a visa may be revalidated shall be determined in accordance with the pertinent provisions of § 41.15.

(e) The prescribed fee, if any, for the issuance of a nonimmigrant visa shall be collected for any revalidation of such visa.

REFUSAL AND REVOCATION

§ 41.17 Refusal of nonimmigrant documentation. (a) Every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer that he is properly classifiable within a nonimmigrant class specifically described in § 41.5.

SUPPLEMENT

(b) Except as otherwise provided in paragraphs (c), (d), (e), and (f) of this section, the provisions of section 212 (a) of the act specifying the grounds of ineligibility to receive visas, as implemented by § 42.42 of this chapter, shall apply to all nonimmigrants.

(c) Aliens who are properly classified as nonimmigrants under the provisions of section 101 (a) (15) of the act, as implemented by § 41.5, including aliens classifiable under the visa symbol EX, NATO-5, or NATO-6, shall not be refused nonimmigrant visas or other nonimmigrant documentation on the ground that they are:

(1) Polygamists, or persons who practice, or advocate the practice of, polygamy, as referred to in section 212 (a) (11) of the act;

(2) Aliens who seek to enter the United States for the purpose of performing skilled or unskilled labor, as referred to in section 212 (a) (14) of the act;

(3) Aliens ineligible to United States citizenship, and aliens who, in departing from the United States to avoid or evade training or service in the United States Armed Forces, were nonimmigrants at the time of such departure, as referred to in section 212 (a) (22) of the act;

(4) Illiterates, as referred to in section 212 (a) (25) of the act.

(d) The grounds for refusing visas to aliens as specified in section 212 (a) of the act shall not apply to nonimmigrant aliens within Class A-1, unless the President so directs and specific instructions are issued by the Department.

(e) Aliens within any of the following classes of nonimmigrants shall be refused visas or other documentation only under those provisions of section 212 (a) of the act which are stated specifically with reference to each class:

(1) Class A-2: Section 212 (a) (27) and (29);

(2) Class C-2: Section 212 (a) (26) (A), (27), (28), and (29);

(3) Class C-3: Section 212 (a) (26) (A), (27), and (29);

(4) Class G-1: Section 212 (a) (27);

(5) Classes G-2, G-3, and G-4: Section 212 (a) (27) and (29);

(6) Classes A-3 and G-5: Section 212 (a), except paragraphs (11), (14), (25), and (28), and except as provided in section 212 (a) (22);

(7) Class NATO-1: Section 212 (a) (27);

(8) Classes NATO-2, NATO-3, and NATO-4: Section 212 (a) (27) and (29).

(f) A nonimmigrant alien in whose case the passport requirement has not been waived and (1) who is within one of the classes of nonimmigrants described in section 101 (a) (15) (A) (i) and (ii) of the

IMMIGRATION AND NATIONALITY ACT

act, or (2) who is within one of the classes of nonimmigrants described in section 101 (a) (15) (G) (i), (ii), (iii), and (iv) of the act, or (3) who is within a class of nonimmigrants classifiable under the visa symbol NATO-1, NATO-2, NATO-3, or NATO-4, shall present a passport which is valid and unexpired on the date such alien is issued a nonimmigrant visa.

(g) A passport which is valid indefinitely for the return of the bearer to the country whose government issued such passport shall be deemed to have the required minimum period of validity as specified in section 212 (a) (26) of the act.

§ 41.18 Revocation and invalidation of nonimmigrant visa and other nonimmigrant documentation. (a) A consular officer is authorized to revoke a nonimmigrant visa or other nonimmigrant documentation under the following circumstances:

(1) The consular officer knows, or after investigation is satisfied, that the visa or other documentation was procured by fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means; or

(2) The consular officer obtains information establishing that the alien was otherwise ineligible to receive the visa or other documentation at the time of issuance.

(b) A consular officer is authorized to invalidate at any time a nonimmigrant visa or other nonimmigrant documentation in any case in which he finds that the alien has become ineligible for such visa or other documentation. The invalidation shall terminate the validity of the visa or other documentation on the date of such invalidation.

(c) The bearer of a nonimmigrant visa or other documentation which is being considered for revocation or invalidation shall, if practicable, be notified of the proposed action and given an opportunity to show cause why his visa or other documentation should not be revoked or invalidated. In connection therewith, the alien shall be required to present his travel document containing the visa stamp. A nonimmigrant visa or other documentation which is revoked or invalidated shall be cancelled by writing the word "revoked" or "invalidated," whichever is applicable, plainly across the face of the visa or other documentation. The cancellation shall be dated and signed by the consular officer taking the action. The failure of an alien to present his visa or other documentation for cancellation shall not affect the validity of any action taken to revoke or invalidate such visa or documentation.

(d) Notice of revocation or invalidation shall be given to the master, commanding officer, agent, owner, charterer, or consignee, of the

SUPPLEMENT

carrier or transportation line on which it is believed the alien intends to travel to the United States, unless the consular officer finds that the visa or other documentation has been cancelled as provided in paragraph (c) of this section. Notice of revocation or invalidation, including a full report of the facts in the case, shall be submitted promptly to the Department for transmission to the Attorney General: *Provided*, That no such notice and report shall be required in the case of an invalidation if the visa or other documentation has been cancelled prior to the alien's departure for the United States. The consular office which issued the visa or other documentation shall be notified of the revocation or invalidation thereof if such action was effected by any other consular office or by the Department.

REGISTRATION AND FINGERPRINTING

§ 41.19 *Registration and fingerprinting of nonimmigrants.* The provisions of section 221 (b) of the Immigration and Nationality Act which require the fingerprinting of aliens in connection with their applications for visas are waived in pursuance of the authority contained in section 221 (b) of that act for the nonimmigrant classes specified in paragraph (a) of this section, and in pursuance of the authority contained in section 8 of the act of September 11, 1957 (71 Stat. 641) for the nonimmigrant classes specified in paragraph (b) of this section:

(a) An alien who is within a class of nonimmigrants enumerated in section 101 (a) (15) (A) and section 101 (a) (15) (G) of the Immigration and Nationality Act, or an alien who is granted a diplomatic visa on a diplomatic passport or on the equivalent thereof. (See § 40.7 (e).)

(b) An alien who is a national of a country whose government does not require fingerprinting in connection with an application for, or the issuance of, a visa to a national of the United States who intends to proceed to such country for a similar purpose, and who is classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (B), (C), (D), (E), (F), (H), or (I) of the Immigration and Nationality Act, including a nonimmigrant alien who is classifiable under the visa symbol EX, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6.

(c) In the case of any nonimmigrant alien who is not exempted from the fingerprinting requirement under the provisions of this section, the fingerprints of such alien shall be taken in connection with his application for a nonimmigrant visa on Form AR-4 or in such other manner as may be authorized by the Department.

IMMIGRATION AND NATIONALITY ACT

(d) Form FS-257, when duly executed, shall constitute the alien's registration record for the purposes of section 221 (b) of the act.

BORDER-CROSSING IDENTIFICATION CARDS

§ 41.20 Nonresident aliens' border-crossing identification cards—

(a) *Aliens eligible to receive.* A nonresident alien's border-crossing identification card, as defined in section 101 (a) (6) of the act, and as required by section 212 (a) (26) of the act, may be issued to an alien who, upon proper application therefor, establishes to the satisfaction of the consular officer that he:

(1) Is a citizen of Canada or other British subject, having a residence in Canada, or a citizen of Mexico having a residence in Mexico;

(2) Is seeking, and has frequent occasion, to enter the continental United States or Alaska from Canada or the continental United States from Mexico, as a nonimmigrant;

(3) Is a bona fide nonimmigrant and is otherwise eligible to receive such a card under the provisions of the act;

(4) Is in possession of a valid passport or other travel document in the nature thereof duly issued to the holder by the appropriate authorities of Canada, Great Britain, or Mexico, and valid for re-entry to Canada or Mexico, if such a passport or other travel document is required for entry into such country.

(5) Can not reasonably be expected, because of remote residence from the border or some other exceptional reason, to make application for such card at an office of the Immigration and Naturalization Service.

(b) *Application procedure.* An application for a nonresident alien's border-crossing identification card shall be made on Form I-190 at a United States consular office in Canada or Mexico. The applicant shall appear in person, shall execute the application in triplicate under oath or by affirmation before the consular officer, and shall be fingerprinted in accordance with the provisions of § 41.19. Four identical photographs of the alien, as described in § 41.9 (d) shall be submitted with the application. One of such photographs shall be attached to each copy of the application form and to the identification card which is issued to the applicant. The photograph requirement may, in the discretion of the consular officer, be waived in the case of an alien under fourteen years of age at the time of issuance of the card. The original of application Form I-190, duly executed, shall be attached to the identification card issued to the alien for delivery to the immigration officer at the time of application for admission into the United States.

SUPPLEMENT

(c) *Alien under fourteen years of age or incapable of executing application.* Applicants for nonresident aliens' border-crossing identification cards shall appear in person and make separate applications therefor. In the case of an alien under fourteen years of age, or one physically incapable of making an application, the application for a nonresident alien's border-crossing identification card may be made by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having lawful custody of, or a legitimate interest in, such alien. An alien under fourteen years of age, or one physically incapable of executing an application, shall be required to appear in person at the time application is made in his behalf.

(d) *Evidence of border-crosser status.* Whenever any alien makes application for a nonresident alien's border-crossing identification card, the burden of proof shall be upon such alien to establish that he is entitled to classification as a nonimmigrant border-crosser and that he is otherwise eligible to receive such card under the provisions of the act. The consular officer may require the alien to furnish any evidence deemed necessary to sustain such burden of proof, including evidence of the alien's intention and ability to depart from the United States at the expiration of his temporary stay. The applicant shall furnish evidence of residence in the border area within the consular district in which application is made, except that a nonresident alien's border-crossing identification card may be issued at a consular office in the interior of Canada or Mexico to an alien who resides in the consular district of such office and who has good and sufficient reason frequently and habitually to cross the land border between the United States and Canada, or the United States and Mexico.

(e) *Procedure in issuing nonresident alien's border-crossing identification card.* If an applicant is found to have the qualifications specified in this section, a nonresident alien's border-crossing identification card may be issued to such applicant on Form I-186. The identification card shall show the date of issuance, the signature of the issuing consular officer, and a brief description of the applicant, and shall be valid for such period as is specified on the card. In the event the photograph requirement has been waived, the right index finger-print of the applicant shall be placed on the card in lieu of his photograph. The applicant shall sign the card with his full name, or by witnessed mark after proper identification. The seal of the issuing consular office shall be impressed on the card. The applicant shall appear at the consular office in person to receive his nonresident alien's border-crossing identification card, unless the consular officer is satisfied that such card may be safely mailed to the applicant in exceptional cases in which personal appearance would entail undue hardship. No

IMMIGRATION AND NATIONALITY ACT

fee shall be charged for the issuance of a nonresident alien's border-crossing identification card or for the application.

(f) *Supporting documents not presented in duplicate.* The contents of all pertinent documents not presented with a duplicate copy for the consular files in support of the alien's application for a nonresident alien's border-crossing identification card shall be noted on the copy of the application which is retained for the consular files or in a separate memorandum attached thereto. Original documents shall be returned to the applicant.

(g) *Invalidation of nonresident alien's border-crossing identification card.* Consular officers are authorized to terminate the validity of a nonresident alien's border-crossing identification card issued by a consular officer:

(1) If the consular officer knows, or after investigation is satisfied, that such card was procured by fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means; or

(2) If such a card is found in the possession of an alien other than the rightful holder; or

(3) If improper use is being made of such card; or

(4) If the consular officer receives information establishing the alien's ineligibility to receive a nonresident alien's border-crossing identification card.

(h) *Surrender of invalidated card.* An alien whose border-crossing identification card has been invalidated shall be required to surrender such card upon request of the consular officer, and such officer shall submit a report of the reasons for the invalidation to the Secretary of State for transmission to the Attorney General.

§ 41.21 *Transfer of visa to new passport.* (a) A valid nonimmigrant visa, including the V-number and other pertinent data contained therein, may be transferred from a passport which has expired or is about to expire to a new passport where (1) the alien is required to surrender the visaed passport to the foreign-issuing authority in exchange for a new passport, or (2) the alien is permitted to retain the expired or expiring passport containing a valid nonimmigrant visa but, nevertheless, requests a consular officer to transfer such visa to a new valid passport, and (3) the alien is found otherwise eligible to receive such a nonimmigrant visa.

(b) A formal application for the transfer of a nonimmigrant visa from one passport to another need not be required, and the consular officer may, in his discretion, waive the personal appearance of the alien if satisfied that the alien is physically present in the consular

SUPPLEMENT

district. The issuance of a transferred visa shall, except as provided in § 41.12, be evidenced by placing the regular visa stamp in the alien's passport. The words "Transferred Visa" shall be inserted on the upper margin of the visa stamp.

(c) A transferred visa shall be validated with the same expiration date as the original visa and for the number of unused applications for admission remaining as of the date of the transfer. No visa fee shall be charged for the transfer of a valid nonimmigrant visa to a new passport. The visa in the expired or expiring passport shall be cancelled, if practicable.

§ 41.22 Nonimmigrants exempted by law or treaty from the requirement of passports, visas, and border-crossing identification cards. The provisions of section 212 (a) (26) of the act relating to the requirement of passports, visas, and border-crossing identification cards for nonimmigrants do not apply in the cases of aliens who fall within any of the following-described categories:

(a) An alien member of the armed forces of the United States who (1) is in the uniform of, or who bears documents identifying him as a member of, such armed forces; (2) has not been lawfully admitted for permanent residence; and (3) is making application for admission to the United States under official orders or permit of such armed forces.

(b) An American Indian born in Canada, having at least fifty per centum of blood of the American Indian race, and passing the border of the United States.

(c) An alien who shall leave Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States.

(d) Personnel belonging to the land, sea or air armed services of a government which is a Party to the North Atlantic Treaty and which has ratified the Agreement between the Parties to the North Atlantic Treaty regarding the status of their forces, signed at London on June 19, 1951, and entering the United States in connection with their official duties under the provisions of Article III of such Agreement. (TIAS 2846.)

(e) Personnel attached to an Allied Headquarters in the United States set up pursuant to the North Atlantic Treaty signed in Washington, D. C., on April 4, 1949, who belong to the land, sea or air armed services of a government which is a Party to the North Atlantic Treaty, and who are entering the United States in connection with their official duties under the provisions of the Protocol on the status

IMMIGRATION AND NATIONALITY ACT

of International Military Headquarters set up pursuant to the North Atlantic Treaty. (S. Ex. B, 83d Cong., 1st Sess.)

(f) All personnel employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944 between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment.

ACCREDITED FOREIGN-GOVERNMENT OFFICIALS

§ 41.30 *Officials of foreign governments.* (a) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (A) (i) or (ii) of the act shall be required to establish to the satisfaction of the consular officer that he is an accredited official or employee of a foreign government recognized *de jure* by the Government of the United States and that he is acceptable to the President or the Secretary of State, or that he is a member of the immediate family of such official or employee.

(b) The term "accredited" as used in sections 101 (a) (15) (A) and 212 (d) (8) of the act refers to an alien holding an official position, other than an honorary official position, who is in possession of a travel document or other evidence showing that he seeks to enter, or pass in transit through, the United States for the purpose of transacting official business for his government, and that he is a national of the country whose government he serves: *Provided*, That an alien who is not a national of the country whose government he serves in an advisory, consultative, or other capacity not contemplated by section 101 (a) (15) (A) (iii) of the act shall, if otherwise qualified, be classified under section 101 (a) (15) (B) of the act, or, if in transit, under section 101 (a) (15) (C) of the act.

(c) The term "immediate family," as used in section 101 (a) (15) (A) of the act, means close relatives who are members of the immediate family by blood, marriage, or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien in the United States from whom they derive their subsidiary status.

(d) The term "attendants," as used in section 101 (a) (15) (A) (iii) of the act, includes an alien who is paid from the public funds of the foreign government employing him and to which he owes allegiance, and who is accompanying, preceding, or following to join a foreign-government official or employee to whom he owes a duty or service, regardless of its nature. The term includes an attendant who is a member of the armed forces of the foreign government to which

SUPPLEMENT

the foreign-government official or employee, as well as the attendant, owe allegiance.

(e) The terms "servants" and "personal employees," as used in section 101 (a) (15) (A) (iii) of the act, include an alien who is employed in a domestic or personal capacity by a foreign-government official or employee, who is paid from the private funds of such official or employee, and who seeks to enter the United States solely for the purpose of such employment.

§ 41.31 Official or representative of foreign government not recognized by the United States. (a) An official of a foreign government which is not recognized *de jure* by the United States, or a member of his immediate family, or the attendant, servant, or personal employee of such official, shall not be classified as a nonimmigrant under the provisions of section 101 (a) (15) (A) of the act.

(b) Any alien referred to in paragraph (a) of this section may, if otherwise qualified, be classified as a nonimmigrant under the provisions of section 101 (a) (15) (B) or (C), or, if he is a representative of such government to an international organization, under the provisions of section 101 (a) (15) (G) (iii) of the act.

§ 41.32 Procedure in issuing visa to foreign-government official or employee—(a) Derivative status cases. In the case of a person who is a member of the immediate family, or an attendant, servant, or personal employee of a foreign-government official or employee, or who otherwise derives status from a principal alien who is not accompanying him, the name and position of the principal alien from whom such person derives his status shall be written below the lower margin of the visa stamp in the foreign passport.

(b) *Official on personal business.* A foreign-government official or employee, or a member of the immediate family, attendant, servant, or employee of such official or employee, who seeks to enter the United States temporarily for personal business or pleasure, shall, if otherwise qualified, be classified as a nonimmigrant under the provisions of section 101 (a) (15) (B) of the act. (See Sen. Rep. 1137, 82d Cong., 2d Sess., p. 19.)

(c) *Courier and acting courier on official business—(1) Courier of career.* An alien who is regularly and professionally employed as a courier by the government to which he owes allegiance, who is proceeding to the United States as a courier on official business for his government, and who is in possession of a diplomatic passport or the equivalent thereof may apply for a diplomatic visa at a United States mission or United States consulate authorized to issue diplo-

IMMIGRATION AND NATIONALITY ACT

matic visas, and shall be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (A) (i) of the act.

(2) *Official acting in capacity of courier.* An alien who is not regularly and professionally employed as a courier by the government to which he owes allegiance, who holds an official position with, and is proceeding to the United States as a courier on official business for, his government shall be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (A) (ii) of the act.

(3) *Nonofficial acting in capacity of courier.* An alien who is not regularly and professionally employed as a courier, who holds no official position with the government for which he is acting in the capacity of courier, or who is not a national of the country for whose government he is acting in the capacity of courier shall be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (B) of the act.

§ 41.33 *Evidence of official status.* An alien applying for a nonimmigrant visa as a foreign-government official or employee, or as an attendant, servant, or personal employee of such an official or employee, or as a member of the immediate family of any such alien, may be required to present evidence of his status and of the means and destination of his travel to, or through, the United States, and any other evidence considered necessary to establish eligibility to receive a visa as a nonimmigrant under the provisions of section 101 (a) (15) (A) or (101) (a) (15) (C), and other applicable provisions, of the act.

§ 41.34 *Significance of nonimmigrant visa in official cases.* A visa properly issued to an accredited official of a foreign government as a nonimmigrant under the provisions of section 101 (a) (15) (A) or (C) of the act shall entitle such official to apply at a port of entry in the United States within the period of its validity for admission as a nonimmigrant, and such visa, when presented to the immigration authorities by such official shall be conclusive evidence of his proper classification.

OFFICIAL VISAS

§ 41.35 *Classes of aliens eligible to apply for official visas.* (a) The term "Official Visa" means a nonimmigrant visa which bears the title "Official Visa" or the designation "Official" and which is issued to a nonimmigrant within a class described or referred to in paragraph (b) of this section.

(b) Aliens within any of the following classes who seek to enter the United States as nonimmigrants may make application for an official visa in accordance with § 41.9:

SUPPLEMENT

- (1) Aliens within a class described in § 40.4 of this chapter, other than paragraph (a) (14) thereof, who are otherwise ineligible to apply for a diplomatic visa by reason of the provisions of § 40.8 (a) of this chapter;
- (2) Aliens classifiable under section 101 (a) (15) (A) (i) or (ii) of the act;
- (3) Aliens classifiable under section 101 (a) (15) (G) (i), (ii) or (iv) of the act, or under section 101 (a) (15) (G) (iii) of the act if the government of which the alien is an accredited representative is recognized *de jure* by the United States but is not a member of the international organization to which the alien is destined;
- (4) Aliens classifiable under section 101 (a) (15) (C) of the act as nonimmigrants described in section 212 (d) (8) of the act;
- (5) Justices of the federal and the highest state tribunals of a foreign country;
- (6) Members and members-elect of the national legislature of a foreign country;
- (7) Officers of the national legislature of a foreign country;
- (8) Members of the immediate family of a principal alien who is within one of the classes referred to or described in subparagraphs (1) to (7), inclusive, of this paragraph;
- (9) Any other class of aliens or individual alien in whose cases or case the Department may specifically authorize the consular officer to accept an application for an official visa.

(c) The issuance of an official visa shall be evidenced by placing the regular nonimmigrant visa stamp or an official visa stamp in the alien's passport in accordance with the provisions of § 41.12. The visa shall bear the title "Official Visa" or the word "Official" shall be stamped diagonally across the lower left-hand margin of the visa stamp in such manner as to be partially covered by the impression seal of the issuing diplomatic or consular office. The fee to be charged for an official visa and the validity thereof shall be determined in accordance with the provisions of §§ 41.14 and 41.15.

(d) No alien shall be considered to have acquired, by reason of the provisions of this section, any exemption under the immigration laws or regulations not otherwise specifically granted by such laws or regulations.

TEMPORARY VISITORS

§ 41.40 *Temporary visitors.* (a) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (B) of the act shall be required to establish to the satisfaction of the consular

IMMIGRATION AND NATIONALITY ACT

officer that he seeks to visit the United States temporarily for business or temporarily for pleasure.

(b) The term "business," as used in section 101 (a) (15) (B) of the act, refers to legitimate activities of a commercial or professional character. It does not include purely local employment or labor for hire. An alien seeking to enter for employment or labor pursuant to a contract or other pre-arrangement shall be required to qualify under the provisions of § 41.100. An alien of distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature, requiring such merit and ability, but having no contract or other pre-arranged employment, may be classified as a nonimmigrant temporary visitor for business.

(c) The term "pleasure," as used in section 101 (a) (15) (B) of the act, refers to the purpose of an alien who seeks to enter the United States temporarily as a tourist or for some other legitimate purpose, including amusement, education (other than some activity which would make him classifiable as a student or teacher), health, rest, or visits with relatives or friends. Under no circumstances shall an alien who seeks to enter the United States as a student or for prearranged employment of any kind be classified as a temporary visitor for business or pleasure, unless such classification shall have been authorized by the Secretary of State after consultation with the Attorney General.

§ 41.41 *Exchange visitors.* (a) The term "exchange visitor" means an alien who falls within one of the classes described in section 201 of the United States Information and Educational Exchange Act of 1948, as amended (62 Stat. 7; 66 Stat. 276; 70 Stat. 241; 22 U. S. C. 1446), who seeks to enter the United States temporarily, and who has been selected to participate in an exchange-visitor program designated by the Secretary of State. Exchange visitors shall be classifiable as nonimmigrants under the provisions of section 101 (a) (15) of the act and shall have the burden of establishing that they are not ineligible to receive a nonimmigrant visa under those provisions of section 212 (a) of the act and § 41.17 which apply to nonimmigrants who are classifiable under the provisions of section 101 (a) (15) (B) of the act. In issuing a nonimmigrant visa to an exchange visitor, the symbol "EX" shall be inserted in the space provided for classification in the visa stamp, and the number of the designated program shall be added to the symbol.

(b) The classification of any alien as an exchange visitor shall be contingent upon (1) the presentation by the alien of a written notification from the sponsor affirming the alien's selection to participate

SUPPLEMENT

in a designated exchange-visitor program, and specifying the program number; and (2) a notification from the Department to the consular officer concerning the designation of the particular program in connection with which the exchange visitor is proceeding to the United States, and showing the title, serial number, sponsor, and the purpose of the designated program.

§ 41.42 Burden of proof and evidence of temporary visitor status.

(a) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (B) of the act shall not only have the burden of establishing that he is entitled to classification as a temporary visitor within the meaning of that section of the act, but also that he is not ineligible to receive a visa as a nonimmigrant under the provisions of section 212 of the act and § 41.17.

(b) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (B) of the act shall establish specifically that:

(1) He has a residence in a foreign country which he has no intention of abandoning;

(2) He is not classifiable under any of the nonimmigrant categories defined in section 101 (a) (15) (F), (H), or (I) of the act;

(3) He is proceeding to the United States temporarily for one of the purposes specified in section 101 (a) (15) (B) of the act;

(4) He intends in good faith, and will be able, to depart from the United States at the expiration of a temporary stay;

(5) He is in possession of a valid foreign visa or other form of permission to enter some foreign country upon the termination of his temporary stay; and that

(6) He has made adequate financial provision to enable him to carry out the purpose of his travel to, sojourn in, and departure from the United States.

TRANSIT ALIENS

§ 41.50 Transit aliens. An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (C) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States temporarily as a nonimmigrant and solely for the purpose of proceeding in immediate and continuous transit through the United States to a foreign destination, or that he qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District under the provisions of section 11 (3), 11 (4), or 11 (5) of the Headquarters Agreement with the United Nations.

IMMIGRATION AND NATIONALITY ACT

§ 41.51 *Burden of proof and evidence of transit status.* (a) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (C) of the act shall not only have the burden of establishing that he is entitled to classification as an alien in transit within the meaning of that section of the act, but also that he is not ineligible to receive a visa as a nonimmigrant under the applicable provisions of section 212 of the act, or any other provision of law, and § 41.17.

(b) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (C) of the act shall establish specifically that:

(1) He is proceeding to the United States solely for the purpose of passing in immediate and continuous transit through the United States to a foreign destination or to the United Nations Headquarters District;

(2) He is in possession of a ticket for, or other assurance of, transportation to his destination;

(3) He is in possession of sufficient funds to enable him to carry out the purpose of his transit journey, or has sufficient funds otherwise available for that purpose;

(4) He is in possession of a valid foreign visa or other form of permission to enter some foreign country: *Provided*, That possession of such a visa or other form of permission shall not be required in the case of an alien proceeding through the United States for the purpose of applying for admission into Canada or some other country if under the laws or regulations of the country of destination the alien would not be required to present a visa, or other form of permission as a condition of entry; and that

(5) He intends in good faith, and will be able, to depart from the United States at the expiration of the period for which he may be admitted.

§ 41.52 *Certain aliens in transit to United Nations.* An alien within the provisions of sections 11 (3), 11 (4) or 11 (5) of the Headquarters Agreement with the United Nations, to whom a visa is to be issued for the purpose of applying for admission solely in transit to the United Nations Headquarters District shall be issued a nonimmigrant visa classified "C-2," and shall be informed by the consular officer that, if admitted, he may be subject to such restrictions in his travel within the United States as may be provided in regulations prescribed by the Attorney General.

§ 41.53 *Accredited officials in transit through the United States.* An accredited official of a foreign government who intends to proceed

SUPPLEMENT

in immediate and continuous transit through the United States on official business for his government which grants similar privileges to officials of the United States shall be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (C) of the act. In issuing a nonimmigrant visa to such an official or to a member of his immediate family, or to his attendant, servant, or personal employee, the symbol C-3 shall be inserted in the space provided for classification in the visa stamp.

CREWMEN

§ 41.60 *Crewmen.* (a) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (D) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to proceed to, and land in, the United States temporarily and solely in pursuit of his calling as a nonimmigrant crewman serving in good faith as such in some capacity required for normal operation and service on board a vessel or aircraft proceeding to the United States. Aliens employed on board such vessel or aircraft in a capacity not ordinarily associated with, or required for, normal operation and service on board the vessel or aircraft, or persons employed or listed as regular members of the crew in excess of the number normally required, shall be considered as passengers and shall be documented as any other passenger not employed aboard the vessel or aircraft.

(b) An alien serving as a member of the crew on board a fishing vessel having its home port or an operating base in the United States is not comprehended within the provisions of paragraph (a) of this section. Such an alien is classifiable as an immigrant.

(c) Except as provided in § 41.64, a nonimmigrant crewman who seeks to proceed to and land in the United States temporarily in pursuit of his calling shall apply on Form FS-257 for an individual nonimmigrant visa in accordance with the provisions of § 41.9, and shall be classifiable under the provisions of section 101 (a) (15) (D) of the act.

§ 41.61 *Burden of proof and evidence of crewman status.* (a) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (D) of the act shall not only have the burden of establishing that he is entitled to classification as a crewman within the meaning of that section of the act, but also that he is not ineligible to receive a visa as a nonimmigrant under the provisions of section 212 of the act, or any other provision of law, and § 41.17.

(b) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (D) of the act shall establish specifically that:

IMMIGRATION AND NATIONALITY ACT

(1) He intends to proceed to, and land only temporarily in, the United States solely in pursuit of his calling as a crewman;

(2) He intends in good faith, and will be able, to depart from the United States with the vessel or aircraft on which he will arrive, or on some other vessel or aircraft; and that

(3) He is in possession of a national passport, or other travel document, crewman's identity certificate, or other papers, which establish his origin, identity and nationality if any, and which further establish unconditionally that he will be permitted to enter some foreign country after a possible temporary landing in the United States.

§ 41.62 *Foreign-government official crewmen.* (a) All alien crewmen serving as such on board any vessel or aircraft proceeding to the United States with a purpose of landing temporarily in the United States shall be subject to the provisions of § 41.60 (c) or § 41.64, except those serving on:

(1) Foreign warships or other vessels of war, or military, naval, or other aircraft of the armed forces of a foreign country, when making friendly calls at United States ports under advance arrangements made with the military, naval, or air force authorities of the United States; or

(2) Any other government vessel or aircraft.

(b) The term "government vessel or aircraft" means a vessel or aircraft owned and operated, or operated only, directly by the Government of the United States with government personnel in connection with public business of a non-commercial and non-profit character, or a foreign-flag vessel or aircraft owned and operated, or operated only, directly by a foreign government recognized *de jure* by the United States, with foreign government personnel in connection with public business of a non-commercial and non-profit character. The term "government vessel or aircraft" shall not include a vessel or aircraft which is merely controlled or subsidized by a government, or one which is engaged in what would ordinarily be regarded as commercial shipping or commercial transportation.

(c) Whenever any alien seeks to enter the United States in the circumstances described in subparagraph (1) or (2) of paragraph (a) of this section, advance arrangements shall be made with the Secretary of State and the Attorney General regarding the documentation and admission of such alien.

§ 41.63 *Procedure in issuing individual visas to crewmen.* The issuance of an individual nonimmigrant visa to an alien as a crewman under the provisions of section 101 (a) (15) (D) of the act shall be

SUPPLEMENT

in accordance with the provisions of §§ 41.5 and 41.12. In any case in which the crewman's passport was issued by a government not recognized *de jure* by the United States, or in which the passport requirement has been waived, the visa stamp shall be impressed on a sheet of official stationery as provided in § 41.12 (a). Form FS-257 shall be retained in the consular files.

§ 41.64 Visa requirement for nonimmigrant crewmen. No crewman shall be considered as having complied with the provisions of section 212 (a) (26) (B) of the act relating to the requirement of valid nonimmigrant visas or border crossing identification cards unless (a) he is in possession of a valid individual nonimmigrant visa or a border crossing identification card, or (b) the requirement of a valid nonimmigrant visa or border crossing identification card has been waived in his case by the Secretary of State and the Attorney General pursuant to the authority contained in section 212 (d) (4) of the act, or (c) his name is included in a crew-list visa issued in accordance with § 41.65.

§ 41.65 Procedures applicable to crew-list visas. (a) Until such time as it becomes administratively practicable to act on the applications of all crewmen for individual nonimmigrant visas, there shall be submitted for visaing at the consular office nearest the foreign port or place from which a vessel or aircraft commences its voyage to the United States a crew list of all alien crewmen serving on board such vessel or aircraft who are not in possession of a valid individual entry document or who are not covered by a waiver of the visa requirement. The master of a vessel or commanding officer of an aircraft who applies for a crew-list visa shall present to the consular officer a manifest of all such crewmen on Form I-418 in duplicate. Where the master of a vessel or the commanding officer of an aircraft submits a single crew list to the consular officer for visaing and fails to set apart those alien crewmen who are to be considered for inclusion in the crew-list visa, the consular officer may, in order to facilitate the issuance of the crew-list visa and without unduly delaying the departure of the vessel or aircraft, require a separate alphabetical listing on the crew list of all such crewmen. In any case in which the consular officer has reason to believe that an individual crewman may be ineligible to receive a visa under section 212 of the act, the master of the vessel or the commanding officer of the aircraft who submits the crew list for visaing may be required to present additional information relevant to the eligibility of any such crewman to receive a visa. In lieu of a manifest on Form I-418, the manifest of alien crewmen serving on board an aircraft may be submitted on the International Civil Aviation Organization manifest, or on Customs

IMMIGRATION AND NATIONALITY ACT

Form 7507 whenever the number of crewmen does not exceed the number which can be properly listed on such form.

(b) If there is no consular officer stationed at the port or place from which the vessel or aircraft commences its voyage to the United States, but a consular officer is stationed at a nearby port or place to whom the crew list may be submitted for visaing by mail or otherwise without delaying the departure of the vessel or aircraft, the crew list shall be so submitted. If there is no such consular officer stationed nearby, the crew list shall be submitted for visaing at the first port or place of call at which a consular officer is stationed.

(c) A supplemental crew-list visa shall be obtained at the port of departure or at subsequent ports or places of call to cover any additional crewmen signed on since the previous crew-list visa was obtained, unless such crewman is in possession of a valid individual visa, or the visa requirement has been waived in his case.

(d) No formal application for a crew-list visa shall be required other than the presentation of the crew list together with such other information as the consular officer may deem necessary to determine the eligibility of an individual crewman to be included in the crew-list visa.

(e) In issuing a crew-list visa the regular nonimmigrant visa stamp shall be impressed on the last page of the crew list immediately below the listing of the crewmen. The crew-list visa shall be validated for a period of six months from the date of issuance and for a single application by the visaed crewmen for admission into the United States. The visa shall, by insertion of the symbol "D" in the space provided therefor, show the classification of the crewmen as nonimmigrants under the provisions of sections 101 (a) (15) (D) of the act. The consular officer shall sign the visa, indicate his title, and affix the seal of his office in the space provided for such purpose.

(f) A fee of \$2 shall be charged for the visaing of any crew list (Tariff of Fees, Foreign Service of the United States of America), except that no fee shall be charged for a crew-list visa issued in the case of an American vessel, or for the issuance of a supplemental crew-list visa in the case of any vessel or aircraft. The receipt of the prescribed fee for the issuance of a crew-list visa shall be evidenced by a rubber-stamp or typed notation placed within the visa stamp in the place designated "Fee Notation" and properly completed in the following form:

Service No. _____
Tariff Item No. _____
Fee Paid: U. S. \$ _____
Local CY, equiv. _____

SUPPLEMENT

(g) In issuing or refusing a crew-list visa, the consular officer shall deliver the original of the crew list to the master of the vessel or commanding officer of the aircraft for presentation to the immigration officer at the first port of arrival in the United States. The duplicate copy of the crew list shall be retained for the consular files and shall be appropriately noted to show the date of issuance or refusal of the crew-list visa, the service number, the tariff item number, and the fee paid (United States dollars and local currency equivalent).

§ 41.66 Preparation of crew list for visa purposes. (a) The entries made on any crew list presented to a consular officer for visaing shall be in the English language and shall conform with the instructions printed on the Form I-418 or other form of manifest used. The person preparing the crew list shall insert the word "first" before the name of any crewman who was not employed on board the vessel or aircraft on its last preceding trip to the United States, and the letters "PE" (signifying "Previous Experience") immediately after the word "first" in the case of any crewman who is proceeding to the United States on his first trip on a vessel or aircraft to which he transferred from another vessel or aircraft of the same transportation line.

(b) If a crew list to be presented for visaing is prepared on more than one page, the pages shall be numbered consecutively and shall be securely fastened together with ribbon inserted through eyelets in the upper left corner of the crew lists. The ends of the ribbon shall be brought through a slit made in the last page and fastened thereto opposite the visa stamp by a wafer seal on which the impression seal of the consular office shall be placed. The consular impression seal shall be placed in the lower right corner of all other pages of the crew list.

(c) The entries for any additional crewmen signed on a vessel or aircraft after the issuance of a crew-list visa shall be contained in a supplemental crew list for visa purposes. If the name of any such crewman is in substitution for that of another crewman previously included in the crew-list visa, the substitution shall be clearly indicated in the supplemental crew list presented for visaing. In the event additional crewmen are signed on under emergency conditions which make it impossible to include their names in the crew list or a supplemental crew list before the sailing of the vessel or flight of the aircraft, a supplemental crew list of such additional crewmen may be presented to a consular officer for visaing at the first port of call at which a consular officer is stationed.

IMMIGRATION AND NATIONALITY ACT

§ 41.67 *Refusal of crew-list visas.* (a) A consular officer who knows or has reason to believe that a crew list submitted for a visa contains the name of an alien who is not a bona fide crewman, or who is otherwise ineligible to receive an individual visa as a crewman, shall either withhold the crew-list visa until the name of such alien shall have been removed from the crew list by the master of the vessel or the commanding officer of the aircraft, or he shall issue the crew-list visa, excluding therefrom the name of any such alien listed as a member of the crew. In excluding an alien's name from a crew-list visa, the consular officer shall place a notation below the visa stamp indicating the name of each crewman so excluded. In no event shall a consular officer strike an alien's name from a crew list.

(b) When a crew-list visa is refused in any case, a full report shall be forwarded by the consular officer to the Department in sufficient time to be received before the arrival of the vessel or aircraft at a port of entry. In such a case the original of the crew list shall be returned to the master or commanding officer, and the duplicate shall be filed in the consular office.

TREATY ALIENS

§ 41.70 *Treaty traders.* (a) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (E) (i) of the act shall be required to establish to the satisfaction of the consular officer that (1) he is entitled to enter the United States solely to carry on substantial trade principally between the United States and the foreign state of which he is a national, under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and such foreign state, or that (2) he is the spouse or child of any such alien and is accompanying or following to join him.

(b) The term "national," as used in this section, means a citizen or subject of a foreign country with which there is existing, at the time of application for a visa, a treaty of commerce and navigation as provided in paragraph (a) of this section.

(c) The term "trade," as used in this section, means trade of a substantial nature which is international in scope, carried on by the alien in his own behalf or as an agent of a foreign person or organization engaged in trade, and is principally between the United States and the foreign state of which such alien is a citizen or subject. Consideration shall be given to any conditions in the country of which the alien is a national which may affect the alien's ability to carry on substantial trade principally between the United States and such country.

SUPPLEMENT

(d) The nationality of a spouse or child of a treaty trader shall not be material to the classification of such spouse or child under the provisions of section 101 (a) (15) (E) (i) of the act.

(e) Representatives of foreign information media shall first be considered for possible classification as nonimmigrants under the provisions of section 101 (a) (15) (I) of the act and § 41.110, before consideration is given to their possible classification as nonimmigrants under the provisions of section 101 (a) (15) (E) of the act and of this section.

§ 41.71 Burden of proof and evidence of treaty-trader status.

(a) An alien applying for a nonimmigrant visa as a treaty trader under the provisions of section 101 (a) (15) (E) (i) of the act shall not only have the burden of establishing that he is entitled to classification as a treaty trader within the meaning of that section of the act, but also that he is not ineligible to receive a visa as a nonimmigrant under provisions of section 212 of the act or any other provision of law, and § 41.17.

(b) An alien applying for a visa as a nonimmigrant treaty trader under the provisions of section 101 (a) (15) (E) (i) of the act shall be required to present any evidence deemed necessary by the consular officer to establish that he is entitled to nonimmigrant classification under that section. Such alien shall establish specifically that:

(1) He is proceeding to the United States solely for the purpose of carrying on substantial trade principally between the United States and the foreign state of which he is a national, under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and such foreign state. In this connection, bank statements, invoices, and correspondence from persons or organizations with whom or with which he has, and will have, commercial relations, may be required;

(2) He intends in good faith, and will be able, to depart from the United States upon the termination of his status; and that

(3) He is employed or will be employed by a foreign person or organization of the same nationality as the alien, and will be engaged in duties of a supervisory or executive character, or if he is or will be employed in a minor capacity, he has special qualifications which make his services essential to the efficient operations of the employer's enterprise. An alien employed solely in a manual capacity shall not be entitled to classification as a treaty trader.

§ 41.75 Treaty investors. (a) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (E) (ii) of the act shall be required to establish to the satisfaction of the consular officer that (1) he is entitled to enter the United States

IMMIGRATION AND NATIONALITY ACT

solely to develop and direct the operations of an enterprise in which he has invested, or in which he is actively in the process of investing, a substantial amount of capital, under and in pursuance of the specific provisions relating to treaty investors, negotiated after June 27, 1952 in a treaty of commerce and navigation between the United States and the foreign state of which the alien is a national, or that (2) he is the spouse or child of such an alien, and is accompanying or following to join him.

(b) The term "national," as used in this section, means a citizen or subject of a foreign country with which there is existing at the time of application for a visa a treaty of commerce and navigation as provided in paragraph (a) of this section.

(c) The nationality of a spouse or child of a treaty investor shall not be material to the classification of such spouse or child under the provisions of section 101 (a) (15) (E) (ii) of the act.

§ 41.76 *Burden of proof and evidence of treaty-investor status.*

(a) An alien applying for a nonimmigrant visa as a treaty investor under the provisions of section 101 (a) (15) (E) (ii) of the act shall not only have the burden of establishing that he is entitled to classification as a treaty investor within the meaning of that section of the act, but also that he is not ineligible to receive a visa as a nonimmigrant under the provisions of section 212 of the act or any other provision of law, and § 41.17.

(b) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (E) (ii) of the act shall be required to present any evidence deemed necessary by the consular officer to establish that he is entitled to nonimmigrant classification under that section. Such alien shall establish specifically that:

(1) He seeks to enter the United States solely for the purpose of developing and directing the operations of an enterprise in the United States: (i) In which he has invested, or is actively in the process of investing, a substantial amount of capital; or (ii) in which his employer has invested, or is actively in the process of investing, a substantial amount of capital: *Provided*, That such employer is a foreign person or organization of the same nationality as the applicant and that the applicant is employed by such person or organization in a responsible capacity; or

(2) He seeks to enter the United States as the spouse or child of an alien described in subparagraph (1) of this paragraph; and

(3) He is not applying for a nonimmigrant visa in an effort to evade the quota or other restrictions which are applicable to immigrants;

SUPPLEMENT

(4) He intends in good faith, and will be able, to depart from the United States upon the termination of his status; and

(5) The enterprise is one which actually exists or is in active process of formation, and is not a fictitious paper operation.

STUDENTS

§ 41.80 *Students.* (a) An alien applying for a nonimmigrant visa as a student under the provisions of section 101 (a) (15) (F) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien, and approved by the Attorney General, and that he is otherwise eligible to receive a nonimmigrant visa as provided in § 41.81.

(b) *Official students.* An alien who has been selected by his government to study at an institution of learning or other place of study in the United States shall, if otherwise qualified, be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (F) of the act, regardless of whether the alien's expenses for his study in the United States will be borne by his government: *Provided*, That if such alien qualifies as an exchange visitor, he shall be classifiable under the symbol EX, or if such alien is accredited and accepted as a foreign-government official or employee under the provisions of section 101 (a) (15) (A) (ii) of the act, he shall be classifiable under the symbol A-2.

(c) *Official trainees.* An alien who has been selected by his government for training in the United States with an agricultural, commercial, financial, governmental, or other industrial establishment shall, if otherwise qualified, be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (H) (iii) of the act, regardless of whether the alien's expenses for his training in the United States will be borne by his government: *Provided*, That if such alien qualifies as an exchange visitor, he shall be classifiable under the symbol EX, or if such alien is accredited and accepted as a foreign-government official or employee under the provisions of section 101 (a) (15) (A) (ii) of the act, he shall be classifiable under the symbol A-2.

§ 41.81 *Burden of proof and evidence of student status.* (a) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (F) of the act shall not only have the burden of establishing that he is entitled to classification as a student within the meaning of that section of the act, but also that he is not ineligible

IMMIGRATION AND NATIONALITY ACT

to receive a visa as a nonimmigrant under the provisions of section 212 of the act or any other pertinent provision of law, and § 41.17. Such alien shall establish specifically that:

(1) He has a residence in a foreign country which he has no intention of abandoning;

(2) He is a bona fide student qualified to pursue, and is seeking to enter the United States temporarily and solely for the purpose of pursuing, a full course of study as prescribed by the established institution of learning or other recognized place of study to which he is destined;

(3) He will attend, and has been accepted for attendance by, an established institution of learning or other recognized place of study in the United States which has been approved by the Attorney General for the purposes of section 101 (a) (15) (F) of the act, as evidenced by the presentation of Form I-20 properly executed by the accepting school, signed by the alien, and notarized by the consular officer. The Form I-20, when properly executed and presented by an alien in support of application for a student visa, shall be accepted by the consular officer as *prima facie* evidence that the designated institution of learning or other place of study has been approved by the Attorney General for the attendance of nonimmigrant students, and that the visa applicant has been accepted for attendance at such institution or place of study;

(4) He is in possession of sufficient funds to cover his expenses or other arrangements have been made to provide for his expenses;

(5) He has sufficient scholastic preparation and knowledge of the English language to enable him to undertake a full course of study in the institution of learning or other place of study by which he has been accepted, or if his knowledge of the English language is inadequate to enable him to pursue a full course of study in such language, the approved school or other recognized place of study is equipped to offer, and has accepted him expressly for, a full course of study in a language with which he is sufficiently familiar, or special arrangements have been made by the accepting institution or other place of study for tutoring the applicant in the English language and the consular officer is satisfied that the applicant will be able, with the assistance of such tutoring, to undertake a full course of study in the United States; and that

(6) He intends in good faith, and will be able, to depart from the United States upon the termination of his status.

(b) An alien who intends to study the English language exclusively while in the United States may be classified as a nonimmigrant

SUPPLEMENT

student under the provisions of section 101 (a) (15) (F) of the act, if otherwise qualified, and if the approved school is equipped to offer, and has accepted him expressly for, a full course of study in the English language, even though no credits are given by the institution for such study. In all cases in which special arrangements have been made with the approved school for the acceptance of a student who lacks an adequate knowledge of the English language, or who intends to enter the United States solely for the purpose of studying the English language, a copy of the letter from the school setting forth such arrangements shall be given to the alien for presentation to the immigration officer at the port of entry in the United States.

INTERNATIONAL ORGANIZATION ALIENS

§ 41.90 *Aliens coming to international organizations.* (a) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (G) (i) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States as:

- (1) A designated principal resident representative of a foreign government recognized de jure by the United States, to an international organization of which the government he represents is a member; or
- (2) An accredited resident member of the staff of such representative; or
- (3) A member of the immediate family of such a representative, or of an accredited resident member of his staff.

(b) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (G) (ii) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States as:

- (1) An accredited representative, other than a designated principal resident representative described in paragraph (a) of this section, of a foreign government recognized de jure by the United States, to an international organization of which the government he represents is a member; or
- (2) A member of the immediate family of such representative.

(c) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (G) (iii) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States as:

- (1) An accredited representative of a foreign government not recognized de jure by the United States, to an international organization of which the government he represents is a member; or

IMMIGRATION AND NATIONALITY ACT

(2) An accredited representative of a foreign government recognized de jure by the United States, to an international organization of which the government he represents is not a member; or

(3) An accredited representative of a foreign government not recognized de jure by the United States, to an international organization of which the government he represents is not a member; or

(4) A member of the immediate family of a representative as described in subparagraph (1), (2) or (3) of this paragraph.

(d) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (G) (iv) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States as:

(1) An officer or employee of an international organization; or

(2) A member of the immediate family of such officer or employee.

(e) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (G) (v) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States as:

(1) An attendant, servant, or personal employee of a representative, officer, or employee referred to in paragraphs (a), (b), (c), and (d) of this section; or as

(2) A member of the immediate family of such attendant, servant, or personal employee.

(f) Aliens referred to in paragraphs (a), (b), (c), (d), and (e) of this section may be accorded a nonimmigrant classification under the provisions of section 101 (a) (15) (G) of the act only if they seek to enter, or pass in transit through, the United States in pursuance of their official duties directly related to such status, as distinct from personal or other private business or pleasure in which case they shall be classified, if otherwise qualified as nonimmigrants, under some other appropriate category defined in section 101 (a) (15) of the act.

(g) No alien shall be accorded nonimmigrant status under section 101 (a) (15) (G) of the act if the facts in his case clearly bring him within any other specific nonimmigrant category defined in section 101 (a) (15) of the act.

(h) The term "international organization" means any public international organization which has been designated by the President by Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act (59 Stat. 669).

SUPPLEMENT

(i) The term "principal alien" means one from whom an alien who is a member of his staff, a member of his immediate family, or his attendant, servant, or personal employee, derives such subsidiary or subordinate status, provided such status is comprehended within the specific provisions of section 101 (a) (15) (G) of the act.

(j) The term "immediate family," as used in section 101 (a) (15) (G) of the act, means close relatives who are members of the immediate family by blood, marriage, or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien in the United States from whom they derive their subsidiary status.

(k) The term "attendants," as used in section 101 (a) (15) (G) (v) of the act, includes an alien who is paid from the public funds of the foreign government to which he owes allegiance, or from the funds of the international organization, and who is accompanying or following to join the principal alien to whom he owes a duty or service.

(l) The term "servants" and "personal employees," as used in section 101 (a) (15) (G) (v) of the act, include an alien who is employed in a domestic or personal capacity by a principal alien, who is paid from the private funds of such alien, and who seeks to enter the United States solely for the purpose of such employment.

(m) An alien who applies for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (G) of the act shall not be refused such visa solely on the ground that he is not a national of the country whose government he represents.

§ 41.91 Evidence of status as representative to, or officer or employee of, international organization. (a) An alien applying for a visa as a nonimmigrant representative to, or as an officer or employee of, an international organization shall be required to present evidence of his status and of the means and destination of his travel to, or through, the United States. The consular officer to whom such alien applies for a visa may, if in doubt, require a confirmation of the status of such representative, officer, or employee from the appropriate foreign office or from the international organization concerned, and any other evidence considered necessary to establish the applicant's eligibility to receive a visa as a nonimmigrant under the provisions of section 101 (a) (15) (G), and other applicable provisions, of the act.

(b) An alien who applies for a visa as a resident member of the staff, a member of the immediate family, or an attendant, servant, or personal employee, of a principal alien may be required to present satisfactory evidence of such status.

IMMIGRATION AND NATIONALITY ACT

§ 41.92 *Procedure in issuing visa to representative to, or officer or employee of, international organization.* (a) The provisions of §§ 41.5 and 41.12 shall be followed in issuing a visa to an alien as a nonimmigrant under the provisions of section 101 (a) (15) (G) of the act.

(b) In the case of an alien who is a resident member of the staff, a member of the immediate family, or an attendant, servant, or personal employee of a principal alien, the name and title of the principal alien from whom such status is derived shall be written below the lower margin of the visa stamp or on the same page of the passport or other document bearing the visa stamp.

(c) An alien who seeks to enter the United States as a foreign-government representative to an international organization and who, at the same time, is proceeding to the United States on official business as a foreign-government official within the meaning of section 101 (a) (15) (A) of the act, shall, if otherwise qualified, be issued a visa as a nonimmigrant under the provisions of section 101 (a) (15) (A) of the act.

TEMPORARY WORKERS

§ 41.100 *Temporary workers and trainees.* (a) No alien shall be accorded consideration as a nonimmigrant under the provisions of section 101 (a) (15) (H) of the act unless the consular officer shall have received from the Immigration and Naturalization Service a petition filed by the alien's prospective employer and approved in accordance with the provisions of section 214 (c) of the act. Subject to the provisions of § 42.28 of this chapter, consular officers shall, upon receipt of such a petition, grant the nonimmigrant status indicated in the petition: *Provided*, That the approval of such a petition shall not, of itself, establish that the alien is a bona fide nonimmigrant or that he is otherwise eligible to receive a nonimmigrant visa.

(b) Aliens who are entitled to classification as nonimmigrants under the provisions of section 101 (a) (15) (A) or (G) of the act shall not be subject to the petition requirements of section 101 (a) (15) (H) and section 214 (c) of the act, unless they are coming to the United States under contract or other pre-arrangement to perform service or labor for hire, or for training, which is outside the scope of the official duties inherently involved in their status, in which case they shall be classified as nonimmigrants under the provisions of section 101 (a) (15) (H) of the act and approved petitions shall be required before the visas are issued.

(c) No consular officer shall refuse to grant nonimmigrant status to an alien under the provisions of section 101 (a) (15) (H) of the

SUPPLEMENT

act on the ground that the alien is not qualified to perform the service or labor, or to undertake the training, specified in the employer's petition approved by the Attorney General: *Provided*, That a consular officer who knows or has reason to believe that such alien is not so qualified shall suspend action on the alien's application for a nonimmigrant visa under section 101 (a) (15) (H) of the act and submit a full report to the Secretary of State for possible reference to the Attorney General of the question whether the Attorney General desires to reconsider his approval of the employer's petition.

(d) If the consular officer knows or has reason to believe that an alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (H) of the act is ineligible to receive such visa under the provisions of section 212 of the act or any other provision of law, and § 41.17, he shall refuse to issue such visa and shall submit a full report to the Secretary of State for possible reference to the Attorney General to complete the file of the Immigration and Naturalization Service in the case.

(e) Aliens coming to the United States as temporary workers or trainees under the exchange visitor program provided for in the United States Information and Educational Exchange Act of 1948, as amended (62 Stat. 6, 66 Stat. 276; 22 U. S. C. 1446), shall be classified as nonimmigrants under the symbol "EX" and the provisions of section 101 (a) (15) of the act, and § 41.5. Such cases shall not be subject to the petition procedure provided for in section 214 (c) of the act. (See § 41.41.)

(f) An alien who is of distinguished merit and ability and who seeks to enter the United States temporarily with the general intention of performing temporary service of an exceptional nature requiring such merit and ability, but having no contract or prearranged employment, may be classified as a temporary visitor for business under the provisions of section 101 (a) (15) (B) of the act.

(g) The terms "industrial trainee," as used in section 101 (a) (15) (H) (iii) of the act, means a nonimmigrant alien who seeks to enter the United States at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving instruction in any field of endeavor, including agriculture, commerce, communication, finance, government, transportation, and the professions, as well as in a purely industrial establishment, regardless of whether any benefit, direct or indirect, accrues to the United States employer or trainer, and regardless of the source of any remuneration received by the alien.

§ 41.101 Alien servant or personal employee of member of the Foreign Service of the United States, or of other citizen or resident of

IMMIGRATION AND NATIONALITY ACT

the United States. (a) Except as provided in paragraphs (b) and (c) of this section, an alien seeking to enter the United States temporarily for employment as the personal servant or personal employee of a member of the Foreign Service of the United States, or of any other citizen or lawful resident of the United States, shall, if otherwise qualified, be classified as a nonimmigrant under the provisions of section 101 (a) (15) (H) (ii) of the act. The petition procedure provided for in section 214 (c) of the act and referred to in § 41.100 (a) shall apply in the case of any such alien servant or employee.

(b) An alien personal servant or personal employee accompanying or following to join an employer who is classifiable as a nonimmigrant or who is in the United States as a nonimmigrant, other than a nonimmigrant under section 101 (a) (15) (A) or (G) of the act, or an alien personal servant or personal employee accompanying or following to join a United States citizen employer who resides or is stationed abroad, including a member of the Foreign Service of the United States, and who will visit or is visiting the United States temporarily, may be classified as a nonimmigrant visitor for business under the provisions of section 101 (a) (15) (B) of the act: *Provided*, That no such alien shall be so classified unless the consular officer is satisfied that he is a bona fide personal servant or personal employee, and is able and willing to leave the United States not later than the departure of his employer.

(c) An alien personal servant or personal employee who is accompanying his alien employer in immediate and continuous transit through the United States, if otherwise qualified for transit status, shall be classified as a nonimmigrant under the provisions of section 101 (a) (15) (C) of the act.

§ 41.102 *Former exchange visitors.* (a) No alien who was admitted into the United States subsequent to June 4, 1956, as an exchange visitor, or who otherwise acquired the status of an exchange visitor subsequent to June 4, 1956, including any alien granted an extension of the period of his temporary admission subsequent to the effective date of this regulation, shall be eligible to apply for and receive a visa as a nonimmigrant under the provisions of section 101 (a) (15) (H) of the act notwithstanding the approval of a petition as provided in section 214 (c) of the act unless (1) the consular officer is satisfied that such alien has resided and been physically present abroad for an aggregate of at least two years since his departure from the United States following the termination of his exchange-visitor status in a country or countries cooperating in the exchange-visitor program, or (2) the requirements of this paragraph are waived as provided in section 201 (b) of the United States Infor-

SUPPLEMENT

mation and Educational Exchange Act of 1948, as amended. (See paragraph (c) of § 42.42 of this chapter in cases of former exchange visitors who apply for immigrant visas.)

(b) Notwithstanding the provisions of paragraph (a) of this section, the requirement of a two-year residence and physical presence abroad shall not apply in the case of an alien who was in the United States as an exchange visitor on or before June 4, 1956, who proceeded abroad temporarily on a personal visit or for reasons related to his exchange-visitor program, and who was readmitted into the United States subsequent to June 4, 1956, for the remainder of the period of authorized stay granted prior to the effective date of this regulation to continue his participation in the exchange-visitor program with which he was connected at the time of his departure from the United States.

NEWS REPORTERS

§ 41.110 Representatives of foreign press, radio, film, or other information media. (a) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (I) of the act shall not be accorded such status unless he establishes to the satisfaction of the consular officer that he seeks to enter the United States as:

(1) A representative of a foreign press, radio, film, or other foreign information medium, solely to engage in such vocation; or as

(2) The spouse or child of such representative, and is accompanying or following to join him.

(b) An alien who will be engaged in the United States in news gathering activities between the United States and the country of which he is a national shall, if otherwise qualified, be classified as a nonimmigrant under the provisions of section 101 (a) (15) (I) of the act, notwithstanding the fact that such alien may also be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (E) of the act.

§ 41.111 Burden of proof and evidence of status as representative of foreign information media. (a) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (I) of the act shall not only have the burden of establishing that he is entitled to classification as a representative of a foreign information medium within the meaning of that section of the act, but also that he is not ineligible to receive a visa as a nonimmigrant under the provisions of section 212 of the act or other provision of law, and § 41.17. Such alien shall establish specifically that:

IMMIGRATION AND NATIONALITY ACT

(1) He seeks to enter the United States solely to represent in good faith a foreign press, radio, film, or other foreign information medium; and that

(2) He intends in good faith, and will be able, to depart from the United States upon the termination of his status.

(b) In order to qualify as the representative of a foreign press, radio, film, or other information medium within the meaning of section 101 (a) (15) (I) of the act, an alien shall be accredited by such a foreign medium having its home office in a foreign country, the government of which grants upon a basis of reciprocity similar privileges to representatives of such a medium having home offices in the United States, except that when the information medium is owned, operated, subsidized, or controlled by a foreign government, directly or indirectly, the reciprocity required by the provisions of section 101 (a) (15) (I) of the act shall be accorded by such foreign government.

TEMPORARY ADMISSION OF EXCLUDABLE ALIENS

§ 41.150 Procedure in recommending temporary admission of excludable aliens. (a) In the case of an alien who is properly classifiable as a nonimmigrant under the provisions of section 101 (a) (15) of the act and who is known or believed by the consular officer to be ineligible to receive a visa as a nonimmigrant under the provisions of section 212 (a) of the act, other than paragraph (27) or (29) thereof, the consular officer to whom such alien makes application for a nonimmigrant visa may, upon his own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien, submit a full report of the case to the Department for possible transmission to the Attorney General pursuant to the provisions of section 212 (d) (3) of the act. If the consular officer's report is accompanied by a recommendation as provided for in section 212 (d) (3) of the act, a statement of the reasons for the recommendation shall be included in the report. If the consular officer is unwilling to recommend the case for advance authorization of the alien's temporary admission and the Secretary of State or the alien requests that the case be forwarded to the Department for possible transmission to the Attorney General, such report shall include a statement of the reasons for the consular officer's unwillingness to make a favorable recommendation in the case.

(b) When the Attorney General authorizes the temporary admission of an excludable alien as a nonimmigrant and the consular officer is so informed by the Secretary of State, the consular officer may proceed with the issuance of a nonimmigrant visa to the alien, subject

SUPPLEMENT

to the conditions imposed by the Attorney General upon the alien's temporary admission into the United States.

(c) In the case of an alien who is seeking to enter the United States for the purpose of proceeding in transit to the Headquarters District of the United Nations in the United States under the provisions of section 11 (3), (4), or (5) of the Headquarters Agreement with the United Nations, and who is known or believed to be ineligible to receive a visa under the provisions of section 212 (a) (28) of the act, but not mandatorily ineligible under the provisions of section 212 (a) (27) or (29) of the act, the consular officer shall submit promptly to the Secretary of State a full report with a request for an advisory opinion concerning the action to be taken in the case. The consular officer may include in such report a recommendation for possible transmission to the Attorney General concerning the alien's possible temporary admission into the United States under the provisions of section 212 (d) (3) of the act. Upon receipt of notification from the Secretary of State that the Attorney General has authorized the temporary admission of such an alien in transit, the consular officer may proceed with the issuance of a transit visa to the alien, subject to the conditions imposed by the Attorney General for the admission of the alien in transit to the United Nations Headquarters District.

Page 547

Section 201 of the United States Information and Exchange Act of 1948 as amended by the Act of June 4, 1956 provides:

"(a) The Secretary (of State) is authorized to provide for interchanges on a reciprocal basis between the United States and other countries of students, trainees, teachers, guest instructors, professors, and leaders in fields of specialized knowledge or skill and shall wherever possible, provide these interchanges by using the services of existing reputable agencies which are successfully engaged in such activity. The Secretary may provide for orientation courses and other appropriate services for such persons from other countries upon their arrival in the United States, and for such persons going to other countries from the United States. When any country fails or refuses to cooperate in such program on a basis of reciprocity the Secretary shall terminate or limit such program, with respect to such country, to the extent he deems to be advisable in the interests of the United States. The persons specified in this section shall be admitted as nonimmigrants, under § 101 (a) (15) of the Immigration and Nationality Act, for such time and under such conditions as may be prescribed by regulations promulgated by the Secretary of

IMMIGRATION AND NATIONALITY ACT

State and the Attorney General. A person admitted under this section who fails to maintain the status under which he was admitted or who fails to depart from the United States at the expiration of the time for which he was admitted, or who engages in activities of a political nature detrimental to the interests of the United States, or in activities not consistent with the security of the United States, shall, upon the warrant of the Attorney General, be taken into custody and promptly deported pursuant to §§ 241, 242, and 243 of the Immigration and Nationality Act. Deportation proceedings under this section shall be summary and the findings of the Attorney General as to matters of fact shall be conclusive. Such persons shall not be eligible for suspension of deportation under § 244 of the Immigration and Nationality Act.

(b) No person admitted as an exchange visitor under this section or acquiring exchange-visitor status after admission shall be eligible to apply for an immigrant visa, or for a nonimmigrant visa under § 101 (a) (15) (H) of the Immigration and Nationality Act, or for adjustment of status to that of an alien lawfully admitted for permanent residence, until it is established that such person has resided and has been physically present in a cooperating country or countries for an aggregate of at least two years following departure from the United States: *Provided*, That upon request of an interested Government agency and the recommendation of the Secretary of State, the Attorney General may waive such two-year period of residence abroad in the case of an alien whose admission to the United States is found by the Attorney General to be in the public interest: *And provided further*, That the provisions of this paragraph shall apply only to those persons acquiring exchange-visitor status subsequent to the date of the enactment hereof."

Approved June 4, 1956.

SUPPLEMENT

SUBCHAPTER G—INTERNATIONAL EDUCATIONAL EXCHANGE SERVICE

PART 61—PAYMENTS TO AND ON BEHALF OF PARTICIPANTS IN THE INTERNATIONAL EDUCATIONAL EXCHANGE PROGRAM

Sec.

- 61.1 Definitions.
- 61.2 Applicability of this part under special circumstances.
- 61.3 Grants to foreign participants to observe, consult, or demonstrate special skills.
- 61.4 Grants to foreign participants to lecture, teach, and engage in research or training.
- 61.5 Grants to foreign participants to study.
- 61.6 Assignment of United States Government employees to consult, lecture, teach, engage in research, or demonstrate special skills.
- 61.7 Grants to United States participants to consult, lecture, teach, engage in research, or demonstrate special skills.
- 61.8 Grants to United States participants to study.
- 61.9 General provisions.

§ 61.1 *Definitions.* For the purpose of this part the following terms shall have the meaning here given:

(a) *International educational exchange program of the Department of State.* A program to promote mutual understanding between the people of the United States and those of other countries and to strengthen cooperative international relations in connection with which payments are made direct by the Department of State, as well as similar programs carried out by other Government departments and agencies and by private organizations with funds appropriated or allocated to the Department of State when the regulations in this part apply under the provisions of § 61.2 (a) and (b).

(b) *Program and Department.* For convenience, the international educational exchange program of the Department of State will hereinafter be referred to as the “program,” and the Department of State will hereinafter be referred to as the “Department.”

(c) *Participant.* Any person taking part in the program for purposes listed in §§ 61.3 through 61.8, including both citizens of the United States and citizens and nationals of the other countries with which the program is conducted.

(d) *Transportation.* All necessary travel on railways, airplanes, steamships, busses, streetcars, taxicabs, and other usual means of conveyance.

(e) *Excess baggage.* Baggage in excess of the weight or size carried free by public carriers on first-class service.

(f) *Per diem allowance.* Per diem in lieu of subsistence includes all charges for meals and lodging; fees and tips; telegrams and telephone calls reserving hotel accommodations; laundry, cleaning and

IMMIGRATION AND NATIONALITY ACT

pressing of clothing; transportation between places of lodging or business and places where meals are taken. Maximum rates of per diem have been approved by the Bureau of the Budget in accordance with Public Law 885, 84th Congress.

§ 61.2 Applicability of this part under special circumstances—

(a) *Funds administered by another department or agency.* The regulations in this part shall apply to payments made to or on behalf of participants from funds appropriated or allocated to the Department and transferred by the Department to some other department, agency or independent establishment of the Government unless the terms of the transfer provide that such regulations shall not apply in whole or in part or with such modifications as may be prescribed in each case to meet the exigencies of the particular situation.

(b) *Funds administered by private organizations.* The regulations in this part shall apply to payments made to or on behalf of participants from funds appropriated or allocated to the Department and administered by an institution, facility, or organization in accordance with the terms of a contract or grant made by the Department with or to such private organizations, unless the terms of such contract or grant provide that the regulations in this part are not to be considered applicable or that they are to be applied with such modifications as may be prescribed in each case to meet the exigencies of the particular situation.

(c) *Appropriations or allocations.* The regulations in this part shall apply to payments made by the Department with respect to appropriations or allocations which are or may hereafter be made available to the Department for the program so far as the regulations in this part are not inconsistent therewith.

§ 61.3 Grants to foreign participants to observe, consult, or demonstrate special skills. A citizen or national of a foreign country who has been awarded a grant to observe, consult with colleagues, or demonstrate special skills may be entitled to any or all of the following benefits when authorized by the Department:

(a) *Transportation.* First-class accommodations on steamship, airplane, railway, or other means of conveyance. For travel in a privately owned vehicle, reimbursement will be in accordance with the provisions of the Standardized Government Travel Regulations.

(b) *Excess baggage.* Excess baggage as deemed necessary by the Department.

(c) *Per diem allowances.* (1) Per diem allowance not to exceed \$17 in lieu of subsistence expenses while traveling to and from the United States (except for the period spent on seagoing vessels), while

SUPPLEMENT

on authorized or emergency stopovers, and while participating in the program.

(2) Per diem allowance not to exceed \$6 in lieu of subsistence expenses while traveling on seagoing vessels outside the continental limits of the United States.

(d) *Tuition and related expenses.* Tuition and related expenses in connection with attendance at seminars and workshops, professional meetings, or other events in keeping with the purpose of the grant.

(e) *Books and educational materials allowance.* A reasonable allowance for books and educational materials.

(f) *Advance of funds.* Advance of funds including per diem.

§ 61.4 *Grants to foreign participants to lecture, teach, and engage in research or training.* A citizen or national of a foreign country who has been awarded a grant to lecture, teach, and engage in research or training may be entitled to any or all of the following benefits when authorized by the Department:

(a) *Transportation.* First-class accommodations on steamship, airplane, railway, or other means of conveyance. For travel in a privately owned vehicle, reimbursement will be in accordance with the provisions of the Standardized Government Travel Regulations.

(b) *Excess baggage.* Excess baggage as deemed necessary by the Department.

(c) *Per diem allowance.* (1) Per diem allowance not to exceed \$12 in lieu of subsistence expenses while traveling to and from the United States (except for the period spent on seagoing vessels), while on authorized or emergency stopovers, and while participating in the program.

(2) Per diem allowance not to exceed \$6 in lieu of subsistence expenses while traveling on seagoing vessels outside the continental limits of the United States.

(d) *Allowance.* An allowance of not to exceed \$50 in lieu of per diem while traveling to and from the United States.

(e) *Tuition and related expenses.* Tuition and related expenses in connection with attendance at educational institutions, seminars and workshops, professional meetings, or other events in keeping with the purpose of the grant.

(f) *Books and educational materials allowance.* A reasonable allowance for books and educational materials.

(g) *Advance of funds.* Advance of funds including per diem.

§ 61.5 *Grants to foreign participants to study.* A citizen or national of a foreign country who has been awarded a grant to study

IMMIGRATION AND NATIONALITY ACT

may be entitled to any or all of the following benefits when authorized by the Department:

(a) *Transportation*. First-class accommodations on steamship, airplane, railway, or other means of conveyance. For travel in a privately owned vehicle, reimbursement will be in accordance with the provisions of the Standardized Government Travel Regulations.

(b) *Excess baggage*. Excess baggage as deemed necessary by the Department.

(c) *Per diem allowance*. (1) Per diem allowance not to exceed \$9 in lieu of subsistence expenses while traveling to and from the United States (except for the period spent on seagoing vessels), while on authorized or emergency stopovers, or in a travel status within the United States.

(2) Per diem allowance not to exceed \$6 in lieu of subsistence expenses while traveling on seagoing vessels outside the continental limits of the United States.

(3) Per diem allowance not to exceed \$8 while present and in attendance at an educational institution, facility or organization.

(4) Per diem allowance not to exceed \$12 while participating in authorized field trips or conferences.

(d) *Allowance*. An allowance of not to exceed \$35 in lieu of per diem while traveling to and from the United States.

(e) *Tuition*. Tuition and related fees for approved courses of study.

(f) *Books and educational materials allowance*. A reasonable allowance for books and educational materials.

(g) *Tutoring assistance*. Special tutoring assistance in connection with approved courses of study.

(h) *Advance of funds*. Advance of funds including per diem.

§ 61.6 *Assignment of United States Government employees to consult, lecture, teach, engage in research, or demonstrate special skills*. An employee of the United States Government who has been assigned for service abroad to consult, lecture, teach, engage in research, or demonstrate special skills, may be entitled to any or all of the following benefits when authorized by the Department:

(a) *Transportation*. Transportation and miscellaneous expenses in the United States and abroad, including baggage charges, and per diem in lieu of subsistence at the maximum rates allowable while in a travel status in accordance with the provisions of the Standardized Government Travel Regulations and the Travel Expense Act of 1949, as amended. The participant shall be considered as remaining

SUPPLEMENT

in a travel status during the entire period covered by his assignment unless otherwise designated.

(b) *Advance of funds.* Advances of per diem as provided in the Travel Expense Act of 1949, as amended.

(c) *Compensation.* Compensation in accordance with Civil Service rules; or in accordance with the grade in which the position occupied may be administratively classified; or Foreign Service Act, as amended.

(d) *Allowances for cost of living and living quarters.* Allowances for living quarters, heat, fuel, light, and to compensate for the increased cost of living in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), when not in a travel status as provided in paragraph (a) of this section.

(e) *Books and educational materials allowance.* A reasonable allowance for books and educational materials. Such books and materials, unless otherwise specified, shall be selected by the employee and purchased and shipped by the Department or its agent. At the conclusion of the assignment, the books and educational materials shall be transferred to and become the property of an appropriate local institution or be otherwise disposed of as directed by the Department.

(f) *Families and effects.* Cost of transportation of immediate family and household goods and effects when going to and returning from posts of assignment in foreign countries in accordance with the provisions of the Foreign Service Regulations of the United States of America.

§ 61.7 *Grants to United States participants to consult, lecture, teach, engage in research, or demonstrate special skills.* A citizen of the United States who has been awarded a grant to consult, lecture, teach, engage in research, or demonstrate special skills may be entitled to any or all of the following benefits when authorized by the Department:

(a) *Transportation.* Transportation and miscellaneous expenses in the United States and abroad, including baggage charges, and per diem in lieu of subsistence while in a travel status. Per diem at the maximum rates allowable in accordance with the provisions of the Standardized Government Travel Regulations and the Travel Expense Act of 1949, as amended, unless otherwise specified. The participant shall be considered as remaining in a travel status during the entire period covered by his grant unless otherwise designated.

(b) *Orientation and debriefing within the United States.* For the purpose of orientation and debriefing within the United States com-

IMMIGRATION AND NATIONALITY ACT

pensation, travel and per diem at the maximum rates allowable in accordance with the provisions of the Standardized Government Travel Regulations and the Travel Expense Act of 1949, as amended, unless otherwise specified.

- (c) *Advance of funds.* Advance of funds including per diem.
- (d) *Compensation.* Compensation at a rate to be specified in each grant.
- (e) *Allowances.* Appropriate allowances as determined by the Department.
- (f) *Books and educational materials allowance.* A reasonable allowance for books and educational materials. Such books and materials, unless otherwise specified, shall be selected by the grantee and purchased and shipped by the Department or its agent. At the conclusion of the grant, the books and materials shall be transferred to and become the property of an appropriate local institution or be otherwise disposed of as directed by the Department.

§ 61.8 *Grants to United States participants to study.* A citizen of the United States who has been awarded a grant to study may be entitled to any or all of the following benefits when authorized by the Department:

(a) *Transportation.* Transportation and miscellaneous expenses in the United States and abroad, including baggage charges, and per diem in lieu of subsistence while in a travel status. Per diem at the maximum rates allowable in accordance with the provisions of the Standardized Government Travel Regulations and the Travel Expense Act of 1949, as amended, unless otherwise specified. Travel status shall terminate upon arrival at the place of study designated in the grant and shall recommence upon departure from that place to return home.

(b) *Orientation and debriefing within the United States.* For the purpose of orientation and debriefing within the United States travel and per diem at the maximum rates allowable in accordance with the provisions of the Standardized Government Travel Regulations and the Travel Expense Act of 1949, as amended, unless otherwise specified.

- (c) *Advance of funds.* Advance of funds including per diem.
- (d) *Maintenance allowance.* A maintenance allowance at a rate to be specified in each grant.
- (e) *Tuition.* Tuition and related fees for approved courses of study.
- (f) *Books and educational materials allowance.* A reasonable allowance for books and educational materials.

SUPPLEMENT

(g) *Tutoring assistance.* Special tutoring assistance in connection with approved courses of study.

§ 61.9 *General provisions.* The following provisions shall apply to the foregoing regulations:

(a) *Health and accident insurance.* Payments for the costs of health and accident insurance for foreign participants while such participants are en route or absent from their homes for purposes of participation in the program when authorized by the Department.

(b) *Transportation of remains.* Payments for the actual expenses of preparing and transporting to their former homes the remains of persons, not United States Government employees, who may die away from their homes while participating in the program are authorized.

(c) *Maxima not controlling.* Payments and allowances may be made at the rate or in the amount provided in the regulations in this part unless an individual grant or travel order specifies that less than the maximum will be allowed under any part of the regulation in this part. In such case, the grant or travel order will control.

(d) *Individual authorization.* Where the regulations in this part provide for compensation, allowance, or other payment, no payment shall be made therefore unless a definite amount or basis of payment is authorized in the individual case, or is approved as provided in paragraph (f) of this section.

(e) *Computation of per diem and allowance.* In computing per diem and allowances payable while on a duty assignment, except for travel performed under the Standardized Government Travel Regulations, fractional days shall be counted as full days, the status at the end of the calendar day determining the status for the entire day.

(f) *Subsequent approval.* Whenever without prior authority expense has been incurred by a participant, or an individual has commenced his participation in the program as contemplated by the regulations in this part, the voucher for payments in connection therewith may be approved by an official designated for this purpose, such approval constituting the authority for such participation or the incurring of such expense.

(g) *Additional authorization.* Any emergency, unusual or additional payment deemed necessary under the program if allowable under existing authority, may be authorized whether or not specifically provided for by this part.

(h) *Biweekly payment.* Unless otherwise specified in the grant, all compensation and allowances for U. S. participants shall be payable biweekly and shall be computed as follows: an annual rate shall be derived by multiplying a monthly rate by 12; a biweekly rate shall

IMMIGRATION AND NATIONALITY ACT

be derived by dividing an annual rate by 26; and a calendar day rate shall be derived by dividing an annual rate by 364. If any maximum compensation or allowance authorized by these regulations or by the terms of any grant is exceeded by this method of computation and payment, such excess payment is hereby authorized. This paragraph may apply to payments made to participants from funds administered as provided in § 61.2 (a) and (b) in the discretion of the department, agency, independent establishment, institution, facility, or organization concerned.

(i) *Payments.* Payments of benefits authorized under any part of the regulations in this part may be made either by the Department of State or by such department, agency, institution, or facility as may be designated by the Department.

(j) *Duration.* The duration of the grant shall be specified in each case.

(k) *Cancellation.* If a recipient of a grant under this program fails to maintain a satisfactory record or demonstrates unsuitability for furthering the purposes of the program as stated in § 61.1 (a), his grant shall, in the discretion of the Secretary of State or such officer as he may designate, be subject to cancellation.

(l) *Outstanding grant authorizations.* Grants and other authorizations which are outstanding and in effect on the date the present regulations become effective, and which do not conform to this part, shall nevertheless remain in effect and be governed by the regulations under which they were originally issued, unless such grants or other authorizations are specifically amended and made subject to the present regulations in which case the individual concerned will be notified.

PART 62—FOREIGN STUDENTS

Sec.

- 62.1 Regulations to be drafted.
- 62.2 Applications.
- 62.3 Reference of applications.
- 62.4 Copies of regulations to Department of State.
- 62.5 Granting of application.
- 62.6 Limitations.

§ 62.1 *Regulations to be drafted.* Subject to the provisions and requirements of this part, appropriate administrative regulations shall be drafted by each executive department or agency of the Government which maintains and administers educational institutions and schools coming within the scope of the legislation. Such regulations shall carefully observe the limitations imposed by the Act of June 24, 1938, and shall in each case include:

SUPPLEMENT

- (a) A list of the institutions and courses in the department or agency concerned in which instruction is available under the terms of the legislation.
- (b) A statement of the maximum number of students of the other American republics who may be accommodated in each such institution or course at any one time.
- (c) A statement of the qualifications to be required of students of the other American republics for admission, including examinations, if any, to be passed.
- (d) Provisions to safeguard information that may be vital to the national defense or other interests of the United States.

§ 62.2 *Applications.* Applications for citizens of the other American republics to receive the instruction contemplated by the said Act of June 24, 1938, shall be made formally through diplomatic channels to the Secretary of State by the foreign governments concerned.

§ 62.3 *Reference of applications.* The Secretary of State shall refer the applications to the proper department or agency of the Government for advice as to what reply should be made to the application.

§ 62.4 *Copies of regulations to Department of State.* In order to enable the Secretary of State to reply to inquiries received from the governments of the other American republics, the Department of State shall be promptly supplied with copies of the regulations drafted by the other departments and agencies of the Government and of subsequent amendments thereto.

§ 62.5 *Granting of application.* Upon receipt of a reply from another department or agency of the Government, as contemplated by § 62.3, in which it is recommended that an application be granted, the Secretary of State shall notify the government of the American republic concerned, through diplomatic channels, that permission to receive the instruction requested in the application is granted, provided the applicant complies with the terms of this part and with the terms of the administrative regulations of the department or agency concerned.

§ 62.6 *Limitations.* In granting permission to citizens of the other American republics to receive instruction under the provisions of the said act of June 24, 1938, the Secretary of State shall limit the number of such permissions so that not more than one citizen of any one American republic shall receive instruction at the same time in the United States Military Academy; and he shall not grant

IMMIGRATION AND NATIONALITY ACT

any such permission to a citizen of any of the American republics to receive instruction in any institution or school if the issuance of such permission will curtail the admission of citizens of the United States eligible to receive instruction therein.

PART 63—EXCHANGE-VISITOR PROGRAM

Sec.

- 63.1 Definitions.
- 63.2 Application for Exchange-Visitor Program designation.
- 63.3 Action on applications for Exchange-Visitor Program designation.
- 63.4 Notification to exchange visitors.
- 63.5 Applications for exchange-visitor status, extensions of stay, and program transfers.
- 63.6 Application for waiver of the provisions of Public Law 555, 84th Congress.
- 63.7 Action on applications for waiver of the provisions of Public Law 555, 84th Congress.

§ 63.1 *Definitions.* (a) As used in this part the term "act" refers to the United States Information and Educational Exchange Act of 1948, as amended.

(b) As used in this part the term "sponsor" means any existing reputable United States agency or organization or recognized international agency or organization having United States membership and offices which makes application as hereinafter prescribed to the Secretary of State for designation of a program under its sponsorship as an "Exchange-Visitor Program."

(c) As used in this part, the term "Exchange-Visitor Program" means a program of a sponsor designed to promote interchange of persons, knowledge and skills, and the interchange of developments in the field of education, the arts, and sciences, and concerned with one or more of the categories of exchange visitors defined in paragraph (g) of this section, which has been designated as such by the Secretary of State, and in actual operation serves to promote mutual understanding between the people of the United States and the people of other countries.

(d) As used in this part, the term "Secretary" means either the Secretary of State or an officer duly designated by him.

(e) As used in this part, the term "Department" means the Department of State.

(f) As used in this part the term "cooperating country" means any country with which the Department is authorized to conduct exchange of persons under the provisions of section 201 of the act.

(g) As used in this part the term "exchange visitor" means any foreign national who has been selected by a sponsor to participate in an Exchange-Visitor Program and who is seeking to enter or has

SUPPLEMENT

entered the United States temporarily in one of the following categories:

- (1) A "student," for the purpose of study, research, or training at, or under the auspices of, an established school or institution of learning, or
- (2) A "trainee," for the purpose of obtaining practical training in a specialized field of knowledge and skill in a nonacademic institution or agency, or
- (3) A "teacher," for the purpose of teaching in established primary or secondary schools, or established schools offering specialized instruction, or
- (4) A "guest instructor," for the purpose of imparting knowledge through lectures or special instruction, or
- (5) A "professor," for the purpose of teaching or advanced research, or both, in an established institution of higher learning, or
- (6) A "leader in a field of specialized knowledge or skill," for purposes of observation, consultation, advanced research or training or the sharing of such specialized knowledge or skill.

(h) As used in this part the term "participant" means a foreign national who has effected his admission into the United States as an exchange-visitor or who has acquired exchange-visitor status subsequent to admission.

§ 63.2 *Application for Exchange-Visitor Program designation.*

(a) Any sponsor may apply to the Secretary for designation of a program under its sponsorship as an "Exchange-Visitor Program." Such application shall be made on Form DSP-37, "Exchange-Visitor Program application." The application shall be completed in all details and shall be submitted to the Secretary.

(b) Each sponsor shall assume, *inter alia*, in the application the obligation to:

- (1) Notify the District Director of the Immigration and Naturalization Service having administrative jurisdiction over the participant's place of temporary residence when (i) a participant has completed the sponsor's program and is scheduled to depart from the United States or to transfer to another Exchange-Visitor Program, or (ii) a participant has ceased to engage in the activity for which he was admitted and to maintain exchange-visitor status.

- (2) Instruct any participant requiring a temporary extension of stay to apply to the Immigration and Naturalization Service at least 30 days before the expiration of the participant's stay and provide the participant requiring the extension with written evidence showing the period and terms of the extension desired.

IMMIGRATION AND NATIONALITY ACT

(3) Provide any participant requiring transfer to another Exchange-Visitor Program with a release in writing which will certify to the need or desirability of further Exchange-Visitor Program participation.

§ 63.3 Action on applications for Exchange-Visitor Program designation—(a) *Evidence.* Whenever an application for program designation on Form DSP-37 is submitted to the Secretary, it shall be examined to ascertain the adequacy of the information furnished. If sufficient information has not been furnished, the sponsor shall be requested to supply information in which the application is deficient. In addition to the information furnished on the DSP-37, the Secretary may require a sponsor to present any evidence of a documentary nature, e. g., program reports, institutional catalogues, letters of professional recognition, accreditation, or approval, which he may consider necessary in making his determination of the eligibility of the program to be designated as an Exchange-Visitor Program.

(b) *Decision by the Secretary of State.* Upon receipt and consideration of the Form DSP-37, including any required additional evidence, the Secretary may in his discretion designate the sponsor's program as an Exchange-Visitor Program. The Secretary will notify the sponsor in writing of his decision. The Secretary may in his discretion revoke designation of an Exchange-Visitor Program for any sufficient cause, including but not restricted to: (1) Failure to maintain educational standards as established by competent professional agencies; (2) failure to submit reports on program operation when requested by the Secretary.

(c) *Assignment of serial number.* (1) If designation is made, the program will be assigned a number within one of the following series:

G-I—Programs sponsored by the International Educational Exchange Service.

G-II—Programs sponsored by the International Cooperation Administration.

G-III—Programs sponsored by the United States Information Agency.

G-IV—Programs sponsored by International agencies or organizations.

G-V—Programs sponsored by national, state, or local governmental agencies.

P-I—Programs sponsored by educational institutions such as schools, colleges, universities, seminaries, libraries, museums, and institutions devoted to scientific and technological research.

SUPPLEMENT

P-II—Programs sponsored by hospitals and related institutions.

P-III—Programs sponsored by non-profit associations, foundations and institutes.

P-IV—Programs sponsored by business and industrial concerns.

P-V—Programs sponsored by host institutions and organizations to international conferences, congresses, and symposia.

(2) The sponsor will thereafter refer to the serial number in any correspondence with the Secretary, consular officers, or the Immigration and Naturalization Service concerning the Exchange-Visitor Program or any individual included in such program.

(d) *Notification to consuls and the Immigration and Naturalization Service.* When a program has been designated as an Exchange-Visitor Program, the American consular officers concerned and the Commissioner of Immigration and Naturalization shall be notified by the Department of the sponsor, serial number, and nature and purpose of the program.

§ 63.4 *Notification to exchange visitors.* The officer designated as the Responsible Officer of an Exchange-Visitor Program shall execute a Form DSP-66 in a single original copy and furnish it to each selected participant for presentation to the American consular office in applying for a visa. The Responsible Officer is required to furnish in the Form DSP-66 the time and terms of the proposed exchange visit which must be demonstrably within the scope of the designated Exchange-Visitor Program concerned. The exchange visitor must present a Form DSP-66 properly filled out by the sponsor and must personally execute the reverse to be eligible for a visa and must present, at the port of entry, Form DSP-66 endorsed by the consular officer issuing the visa to be eligible for admission into the United States.

§ 63.5 *Applications for exchange-visitor status, extensions of stay, and program transfers*—(a) *Application for change of status to exchange-visitor.* Such application shall be made by the prospective exchange visitor who has been admitted into the United States in one of the nonimmigrant classifications specified in 101 (a) (15) of the Immigration and Nationality Act and who has maintained bona fide nonimmigrant status to the office of the Immigration and Naturalization Service nearest the alien's place of temporary residence. The application must be accompanied by a Form DSP-66 properly executed by the sponsor and the prospective exchange visitor. The Immigration and Naturalization Service officer to whom application is made may request the views of the Department prior to the granting of the change of status in those cases in which (1) the applicant has

IMMIGRATION AND NATIONALITY ACT

resided in the United States for a period of one year or longer immediately preceding his application, or (2) the officer cannot determine from the evidence submitted that the program activity proposed for the applicant is clearly within the scope of the designation of the Exchange-Visitor Program concerned, or that the selection procedures agreed upon between the sponsor and the Department of State at the time of the designation have been followed.

(b) *Application for extension of stay.* Such application shall be made at least 30 days before the expiration of the exchange-visitor's authorized stay to the District Director of the Immigration and Naturalization Service having administrative jurisdiction over the exchange visitor's place of temporary residence. The application shall be accompanied by the Form DSP-66 with which the exchange-visitor originally obtained status, properly endorsed by the sponsor to show the time and terms of the extended stay for which application is made. If the application falls within one of the categories of cases which the Department has advised the Immigration and Naturalization Service are questionable from an exchange point of view, or should be subject to special checks, the Immigration and Naturalization Service may refer the application to the Department for its views prior to action on the application.

(c) *Application for program transfer.* An application for permission to transfer from one designated Exchange-Visitor Program to another must be submitted to the District Director of the Immigration and Naturalization Service nearest the exchange visitor's place of temporary residence by the exchange-visitor concerned at least thirty days before participation in the program to which the exchange visitor wishes to transfer is scheduled to begin. Any application for program transfer must be accompanied by a duly executed Form DSP-67. The District Immigration and Naturalization Service Office concerned may request the views of the Department as to whether or not a proposed transfer is in the best interests of international exchange in any case in which the applicant is unable to present a certificate of release from the current sponsor, in which it appears that the transfer is solely or principally for the purpose of continuing the residence and employment of the exchange visitor in the United States, or in which the officer cannot perceive clear progress toward an educational objective, before granting the exchange visitor permission to transfer.

§ 63.6 *Application for waiver of the provisions of Public Law 555, 84th Congress.* Any exchange visitor or former exchange visitor who desires to have all or part of the foreign residence requirement, provided in Public Law 555, 84th Congress, waived may apply to the

SUPPLEMENT

District Director of the Immigration and Naturalization Service having administrative jurisdiction over his intended place of permanent residence in the United States. Such application shall consist of an affidavit as to the facts concerning the admission and stay of the exchange visitor or former exchange visitor and the reason or reasons why the applicant desires to apply for permanent residence to commence before the completion of the foreign residence requirement. The application must be supported by documentary evidence that ineligibility for permanent residence status would (a) impose undue hardship upon the exchange visitor that could not have been anticipated at the time exchange visitor status or the last extension of stay as an exchange visitor was granted, or (b) be clearly detrimental to a program or activity of official interest to a United States agency, or (c) impose undue restriction on a foreign national who paid a visit of 90 days or less to the United States as an exchange visitor at the request of a United States institution or agency to contribute to a project or program of the institution or agency. Former exchange visitors who have returned abroad may make application to the nearest American consular office.

§ 63.7 Action on applications for waiver of the provisions of Public Law 555, 84th Congress. The District Director of the Immigration and Naturalization Service shall forward any application received, together with any documents submitted therewith, to the Department through the appropriate Regional Commissioner. The consular office shall forward any application received directly to the Department. The Secretary shall review each application to determine that it does not constitute misuse of the exchange program on the part of foreign nationals or United States institutions or agencies. After review of the application, the Secretary may in his discretion recommend that the application be granted or denied. The recommendation of the Secretary shall be forwarded by the Department to the Regional Commissioner of the Immigration and Naturalization Service having jurisdiction over the district office in which the application was filed.

Page 563

PART 42—DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT

Sec.

42.1 Definitions.

CLASSIFICATION OF IMMIGRANTS

- 42.2 Presumption of immigrant status.
- 42.3 Immigrant classification symbols.

IMMIGRATION AND NATIONALITY ACT

CLASSES OF NONQUOTA IMMIGRANTS

Sec.

- 42.4 Nonquota relatives.
- 42.5 Returning resident aliens.
- 42.6 Natives of Western Hemisphere countries.
- 42.7 Former United States citizens.
- 42.8 Ministers of religion.
- 42.9 United States Government employees.

CLASSES OF QUOTA IMMIGRANTS

- 42.10 Quota immigrants.
- 42.11 Classes of quota immigrants.
- 42.12 Annual determination of quota numbers available under each quota.
- 42.13 Determination of quota to which an immigrant is chargeable.

ASIANS

- 42.14 Asia-Pacific triangle.
- 42.15 Quotas for Chinese persons and for China.
- 42.16 Quota preferences applicable to quotas of quota areas within Asia-Pacific triangle.
- 42.17 Nonquota status for natives of Asia-Pacific triangle; Exceptions.
- 42.18 Subquotas.

WAITING LISTS

- 42.20 Immigrant waiting lists.
- 42.21 Aliens included in single registration.
- 42.22 Aliens not to be registered or to retain registration on a quota-waiting list.
- 42.23 Removal of names of registrants from quota waiting list.

ORDER OF PRIORITY OF CONSIDERATION

- 42.25 Priority for considering quota immigrant cases.
- 42.26 Procedure in granting preference status.
- 42.27 Procedure in granting nonquota status in petition cases.
- 42.28 Suspension or termination of action in petition cases.

EXEMPTIONS FROM IMMIGRANT VISA REQUIREMENTS

- 42.29 Immigrants not required to obtain immigrant visas.

APPLICATIONS

- 42.30 Application for immigrant visa.
- 42.31 Immigrant preceding his family; informal examination of members of family.
- 42.35 Supporting documents in immigrant cases; burden of proof.

PASSPORTS

- 42.36 Passport requirement for immigrants.

EXAMINATION AND FINGERPRINTING

- 42.37 Physical and mental examination of immigrants.
- 42.38 Registration and fingerprinting of immigrants.

ISSUANCE OF IMMIGRANT VISAS

- 42.40 Authority to issue, refuse, and revoke, immigrant visas.
- 42.41 Procedure in issuing immigrant visa.

INELIGIBLE IMMIGRANTS

- 42.42 Classes of aliens ineligible to receive immigrant visas.

REFUSAL AND REVOCATION OF IMMIGRANT VISAS

- 42.43 Procedure in refusing immigrant visas.
- 42.44 Revocation of immigrant visas.
- 42.45 Disposition of supporting documents.
- 42.46 Refund of immigrant visa fee.

SUPPLEMENT

VALIDITY AND REVALIDATION

Sec.

42.47 Validity of immigrant visa.
42.48 Issuance of new or replace immigrant visa.

TRANSFER OF PENDING CASES

42.49 Transfer of cases.

§ 42.1 *Definitions.* The following definitions, in addition to the pertinent definitions contained in the Immigration and Nationality Act, shall be applicable to this part:

(a) "Act" means the Immigration and Nationality Act.

(b) "Affirmation" means a verification in confirmation of truth in lieu of a sworn statement by a person who has conscientious scruples against taking an oath.

(c) "Chinese person" means an alien who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to China.

(d) "Consular officer," as defined in section 101 (a) (9) of the act, shall include the District Administrators of the Trust Territory of the Pacific Islands, and the Naval Administrator, United States Naval Administration Unit Saipan District, hereby designated as consular officers for the purpose of issuing immigrant visas.

(e) "Department" means the Department of State of the United States of America.

(f) "Form FS-256" shall be understood to refer to Form FS-510 "Application for Immigrant Visa and Alien Registration" and/or Form FS-511 "Immigrant Visa and Alien Registration" where the use of these forms in substitution for Form FS-256 has been authorized.

(g) "Passport" as defined in section 101 (a) (30) of the act shall not be considered as limited to a national passport, but shall be considered as including any other document issued by a competent authority, which shows the bearer's origin, identity, and nationality if any, and which is valid for the entry of the bearer into a foreign country. The term "passport" shall not be considered as limited to a single document but may consist of two or more documents which, when considered together, fulfill the requirements of a passport as defined in section 101 (a) (30) of the act: *Provided*, That written permission to enter a foreign country shall be considered as fulfilling one of such requirements if it is clearly valid for such purpose and specifies no conditions to such validity for the alien's entry into a foreign country.

(h) "Port of entry" means a port or place designated by the Attorney General or the Commissioner of Immigration and Naturali-

IMMIGRATION AND NATIONALITY ACT

zation at which an alien may apply for admission into the United States.

CLASSIFICATION OF IMMIGRANTS

§ 42.2 *Presumption of immigrant status.* Every alien shall be presumed to be an immigrant until he furnishes information or presents evidence establishing nonimmigrant status under the provisions of Part 41 of this chapter. An immigrant shall be classified as a quota immigrant until he establishes that he is classifiable as a nonquota immigrant. In order to be classified as a nonquota immigrant, an alien shall be required to qualify for such classification within one of the nonquota immigrant categories specified in section 101 (a) (27) of the act and hereinafter more specifically described in this part.

§ 42.3 *Immigrant classification symbols.* (a) A visa issued to an alien as an immigrant within one of the nonquota immigrant classes defined in section 101 (a) (27) of the act, or to an alien as an immigrant within one of the quota immigrant classes described in section 203 (a) of the act, shall bear a symbol to show the classification of the immigrant, in conformity with section 221 (a) of the act. Such symbol shall be inserted by the consular officer in the designated space on the visa side of the immigrant visa application Form 256.

(b) The following symbols shall be used in the cases of nonquota immigrants:

Class	Section of the act	Symbol to be inserted in visa
Spouse of United States citizen	101 (a) (27) (A)	M-1
Child of United States citizen	101 (a) (27) (A)	M-2
Returning resident	101 (a) (27) (B)	N
Native of certain Western Hemisphere countries	101 (a) (27) (C)	O-1
Spouse of alien classified O-1	101 (a) (27) (O)	O-2
Child of alien classified O-1	101 (a) (27) (O)	O-3
Person who lost United States citizenship by marriage	101 (a) (27) (D) 324 (a)	P-1
Person who lost United States citizenship by serving in foreign armed forces	101 (a) (27) (D) and 327	P-2
Minister of religion	101 (a) (27) (F)	Q-1
Spouse of alien classified Q-1	101 (a) (27) (F)	Q-2
Child of alien classified Q-1	101 (a) (27) (F)	Q-3
Certain employees or former employees of United States Government abroad	101 (a) (27) (G)	R-1
Spouse of alien classified R-1	101 (a) (27) (G)	R-2
Child of alien classified R-1	101 (a) (27) (G)	R-3

SUPPLEMENT

(c) The following symbols shall be used in the cases of quota immigrants:

Class	Section of the act	Symbol to be inserted in visa
First preference: Selected immigrant	203 (a) (1)	T-1
Spouse of alien classified T-1	203 (a) (1)	T-2
Child of alien classified T-1	203 (a) (1)	T-3
Second preference: Parent of United States citizen	203 (a) (2)	U
Third preference: Spouse of alien resident	203 (a) (3)	V-1
Third preference: Child of alien resident	203 (a) (3)	V-2
Fourth preference: Brother or sister of United States citizen	203 (a) (4)	W-1
Fourth preference: Son or daughter of United States citizen	203 (a) (4)	W-2
Nonpreference: Other quota immigrants	203 (a) (4)	X

(d) The following symbols shall be used in the cases of nonquota immigrants who qualify for the benefits of the act of September 11, 1957 (Public Law 85-316).

Class	Section of the act	Symbol to be inserted in visa
Eligible orphan adopted abroad	4 (b) (2) (A)	K-1
Eligible orphan to be adopted	4 (b) (2) (B)	K-2
Spouse or child of adjusted first preference immigrant	9	K-3
Beneficiary of first preference petition approved prior to July 1, 1958	12	K-4
Spouse or child of beneficiary of first preference petition approved prior to July 1, 1958	12	K-5
Beneficiary of second preference petition approved prior to July 1, 1957	12	K-6
Beneficiary of third preference petition approved prior to July 1, 1957	12	K-7
German expellee	15 (a) (1)	K-8
Netherlands refugee or relative	15 (a) (2)	K-9
Refugee-escapee	15 (a) (3)	K-10
Azores natural calamity victim	1 (A)	K-11
Spouse or unmarried minor son or daughter of Azores calamity victim	1	K-12
Netherlands national displaced from Indonesia	1 (B)	K-13
Spouse or unmarried minor son or daughter of Netherlands national displaced from Indonesia	1	K-14

IMMIGRATION AND NATIONALITY ACT

CLASSES OF NONQUOTA IMMIGRANTS

§ 42.4 *Nonquota relatives.* (a) An alien shall, regardless of ancestry, be accorded a nonquota immigrant status under the provisions of section 101 (a) (27) (A) of the act, only if such alien establishes by the presentation of appropriate evidence to the consular officer that he is the spouse or child of a citizen of the United States, and is the beneficiary of an approved petition filed in his behalf with the Attorney General by such citizen, upon the basis of which the consular officer shall have been authorized by the Secretary of State to grant the nonquota immigrant status. An approved petition for first-preference quota status for the husband of a United States citizen shall, if still valid on December 24, 1952, be deemed to be valid for nonquota status under section 101 (a) (27) (A) of the act until December 24, 1953, except as otherwise provided in § 42.28.

(b) In issuing an immigrant visa to an alien child as a nonquota immigrant under the provisions of section 101 (a) (27) (A) of the act, the consular officer shall warn such alien, if he is approaching the age of twenty-one years, that he will not be admissible as such a nonquota immigrant if he fails to apply for admission at a port of entry in the United States before reaching the age of twenty-one years.

§ 42.5 *Returning resident alien*—(a) *Burden of proof.* An alien shall, regardless of ancestry, be issued an immigrant visa as a non-quota immigrant under the provisions of section 101 (a) (27) (B) of the act only if he sustains the burden of establishing through the presentation of appropriate evidence that (1) he has the status of an alien lawfully admitted for permanent residence, (2) he is returning to the United States from a temporary visit abroad, and (3) he is otherwise eligible to receive an immigrant visa under the provisions of section 212 of the act and § 42.42.

(b) *Evidence of returning resident status.* An alien applying for a nonquota immigrant visa under the provisions of section 101 (a) (27) (B) of the act shall be required to present any evidence deemed necessary by the consular officer to establish eligibility to receive such visa. In this connection, the applicant may be required to furnish for inspection his alien registration receipt card (Form I-151) if such a card has been issued to him, or an expired reentry permit if such a reentry permit was issued to him. Such alien shall be required to establish specifically that:

(1) He had the status of an alien lawfully admitted for permanent residence at the time of his departure from the United States:

SUPPLEMENT

(2) He departed from the United States with the intention of returning thereto;

(3) He is returning to the United States from a temporary visit abroad: *Provided*, That when his stay abroad was protracted, he shall be required to establish whether the reasons therefor were beyond his control and whether he was not responsible therefor, in order that it may be determined whether the sojourn abroad was temporary.

(c) *Authority to require supporting documents.* The provisions of section 222 (b) of the act requiring an immigrant to furnish with his application for a visa certain records and documents shall be applicable, in the case of an alien who is classifiable as a nonquota immigrant under the provisions of section 101 (a) (27) (B) of the act, to the extent of requiring such alien to furnish those records and documents which relate to the period of his residence in the United States and the period of his temporary visit abroad, unless the consular officer has reason to question the legality of the alien's previous admission into the United States for permanent residence, or his eligibility otherwise to receive an immigrant visa. If any such record or document is not obtainable within the meaning of § 42.35 (c), the consular officer may permit the alien to submit, in lieu thereof, other satisfactory evidence of the fact to which the record or document would, if obtainable, pertain.

(d) *Bearers of reentry permits.* An alien who is in possession of an unexpired reentry permit issued to him by the Immigration and Naturalization Service, and who makes application for an immigrant visa of any kind shall, prior to the issuance of the visa, relinquish such permit to the consular officer for attachment to the immigrant visa and for such disposition at the port of entry as the immigration officer deems appropriate.

§ 42.6 *Natives of Western Hemisphere countries.* (a) An alien shall be accorded a nonquota immigrant status under the provisions of section 101 (a) (27) (C) of the act only if such alien sustains the burden of presenting evidence which establishes to the satisfaction of the consular officer that:

(1) Such alien was born in Canada, the Republic of Mexico, the Republic of Cuba, the Republic of Haiti, the Dominican Republic, the Canal Zone, or an independent country of Central or South America, or that

(2) Such alien is the eligible spouse, or the child of an alien referred to in subparagraph (1) of this paragraph, and is accompanying or following to join him.

(b) The provisions of paragraph (a) of this section shall not apply to a Chinese person, or to any other person who is attributable

IMMIGRATION AND NATIONALITY ACT

by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle, unless such person is the child of, and is accompanying or following to join, an alien referred to in subparagraph (1) of paragraph (a) of this section.

(c) Nonquota immigrant status under the provisions of section 101 (a) (27) (C) of the act, once acquired as provided in paragraphs (a) and (b) of this section, shall not be lost by the operation of the provisions of section 202 (a) (1) or (2) of the act.

(d) An alien born in a quota area and claiming nonquota immigrant status under the provisions of section 101 (a) (27) (C) of the act because of relationship to a spouse or parent born in a nonquota country shall be required to present the evidence necessary to establish such status.

(e) An alien referred to in subparagraph (2) of paragraph (a) of this section, who is following to join an alien parent in the United States, shall establish by satisfactory evidence that the parent was born in a nonquota country, and has the status of an alien lawfully admitted for permanent residence.

(f) An alien applying for a nonquota immigrant visa as the spouse of an alien classifiable as a nonquota immigrant under the provisions of section 101 (a) (27) (C) of the act shall be required to establish that the applicant's spouse from whom nonquota status is derived by the applicant under that section of the act was born in a nonquota country and is eligible to receive a nonquota immigrant visa under that section of the act, or that such applicant's spouse was born in a nonquota country and has the status of an alien lawfully admitted for permanent residence. Such an applicant shall not be eligible for nonquota status under section 101 (a) (27) (C) of the act if he or she is a Chinese person, or any other person who is attributable by as much as one-half of his or her ancestry to a people or peoples indigenous to the Asia-Pacific triangle.

§ 42.7 Former United States citizens—(a) Women expatriates. An alien applying for reacquisition of citizenship under the provisions of section 324 (a) of the act shall, regardless of ancestry, be accorded nonquota immigrant status under the provisions of section 101 (a) (27) (D) of the act only if such alien sustains the burden of presenting evidence which establishes to the satisfaction of the consular officer that she was a citizen of the United States and that she lost her citizenship by reason of marriage to an alien, or by reason of the loss of United States citizenship by her husband, or by reason of her marriage to an alien who was ineligible to citizenship, and that she has not acquired any other nationality by any affirmative act other

SUPPLEMENT

than marriage. The provisions of this paragraph shall apply to aliens regardless of their marital status at the time of the issuance of a visa.

(b) *Military expatriates.* A person, regardless of ancestry, who, during World War II and while a citizen of the United States, lost his United States citizenship under the provisions of section 2 of the act of March 2, 1907 (34 Stat. 1228), or under the provisions of section 401 (b) or (c) of the Nationality Act of 1940 (54 Stat. 1169), by reason of entering, or serving in, the military, air, or naval forces of any country at war with a country with which the United States was at war after December 7, 1941 and before September 2, 1945, or by reason of taking an oath or obligation for the purpose of entering such forces, and who may apply for reacquisition of citizenship under the provisions of section 327 of the Immigration and Nationality Act, may be accorded the status of a nonquota immigrant under the provisions of section 101 (a) (27) (D) of that act. For the purposes of section 327 of the Immigration and Nationality Act, World War II shall be deemed to have begun on September 1, 1939, and to have terminated on September 2, 1945.

§ 42.8 *Ministers of religion.* (a) An alien shall, regardless of ancestry, be accorded a nonquota immigrant status under the provisions of section 101 (a) (27) (F) of the act only if such alien establishes that:

(1) He continuously for at least 2 years immediately preceding the time of his application for a visa has been, and seeks to enter the United States solely for the purpose of, carrying on the vocation of minister of a recognized religious denomination having a bona fide organization in the United States and needing the services of such minister, as evidenced by an authorization from the Secretary of State to grant such status upon the basis of a petition filed by a competent authority of the denomination with, and approved by, the Attorney General; or

(2) Is the spouse or child of such minister and is accompanying or following to join him.

(b) The term "minister," as used in section 101 (a) (27) (F) of the act, means a person duly authorized by a recognized religious denomination having a bona fide organization in the United States to conduct religious worship, and to perform other duties usually performed by a regularly ordained pastor or clergyman of such denomination. The term shall not include a lay preacher not authorized to perform the duties usually performed by a regularly ordained pastor or clergyman of the denomination of which he is a member, and shall not include a nun, lay brother, or cantor.

IMMIGRATION AND NATIONALITY ACT

§ 42.9 *United States Government employees.* An alien shall, regardless of ancestry, be accorded a nonquota immigrant status under the provisions of section 101 (a) (27) (G) of the act only if the consular officer is satisfied that such alien:

- (a) Has served the Government of the United States faithfully as an employee for a total period of not less than 15 years;
- (b) Performed such service abroad for one or more establishments of the United States Government, but not necessarily for the Foreign Service of the United States;
- (c) If a former employee, was retired under honorable conditions; and
- (d) Has been recommended for such nonquota status by the principal officer at the diplomatic or consular office where the alien is applying for a visa and such recommendation shall have been approved by the Secretary of State upon the basis of a finding that the granting of such status is in the national interest of the United States; or
- (e) Is the spouse or child of an alien described in paragraphs (a) to (d), inclusive, of this section.

CLASSES OF QUOTA IMMIGRANTS

§ 42.10 *Quota immigrants*—(a) *Presumption of classification.* Every alien shall be presumed to be a nonpreference quota immigrant until such alien establishes that he is entitled to be classified as a preference quota immigrant, or as a nonquota immigrant, or as a nonimmigrant.

(b) *Burden of proof of classification.* Every alien who seeks to establish that he is classifiable as a preference quota immigrant shall have the burden of proving that he is entitled to be classified within one of the preference quota classes specified in the act and referred to more specifically in § 42.11.

(c) *Effect of approved petition.* The fact that a consular officer shall have been authorized by the Secretary of State to grant a preference quota status to an alien upon the basis of a petition filed with, and approved by, the Attorney General in such alien's case shall not be considered as shifting from the alien to the consular officer the burden of proving eligibility to receive a visa. Such authorization by the Secretary of State shall have the effect of establishing *prima facie* that the alien is entitled to the classification approved in the petition.

§ 42.11 *Classes of quota immigrants*—(a) *First preference class.* The first preference class of quota immigrants shall consist of the

SUPPLEMENT

selected immigrants referred to in section 203 (a) (1) of the act, including the accompanying spouses and children of such immigrants, who shall be entitled to preferential consideration under the first half of the quota to which they are chargeable and within any other portion of such quota not required for the issuance of visas to immigrants primarily entitled thereto.

(b) *Second preference class.* The second preference class of quota immigrants shall consist of the alien parents of citizens of the United States, such citizens being twenty-one years of age or over, as referred to in section 203 (a) (2) of the act, who shall be entitled to preferential consideration under the next 30 per centum of the quota to which they are chargeable and to second preference within any other portion of such quota not required for the issuance of visas to immigrants primarily entitled thereto.

(c) *Third preference class.* The third preference class of quota immigrants shall consist of the alien spouses and children of aliens lawfully admitted for permanent residence, referred to in section 203 (a) (3) of the act, who shall be entitled to preferential consideration under the remaining 20 per centum of the quota to which they are chargeable and to third preference within any other portion of such quota not required for the issuance of visas to immigrants primarily entitled thereto.

(d) *Fourth preference class.* The fourth preference class of quota immigrants shall consist of the alien brothers and sisters of United States citizens, and of the alien sons and daughters who are twenty-one years of age or over, or married, of United States citizens, as referred to in section 203 (a) (4) of the act, who shall be entitled to a preference of not exceeding 25 per centum of that portion of every quota which is not required for the issuance of immigrant visas to qualified immigrants within the first, second, and third preference classes.

(e) *Nonpreference class.* The nonpreference class of quota immigrants shall consist of all quota immigrant not entitled to preferential consideration as preference-quota immigrants under section 203 (a) (1), (2), (3), or (4) of the act: *Provided*, That prior to July 1, 1954, not more than 50 per centum of the quota numbers available for the issuance of visas to qualified nonpreference quota immigrants shall be available for the issuance of visas to qualified immigrants under the second proviso to section 3 (c) of the Displaced Persons Act of 1948, as amended (62 Stat. 1009, 64 Stat. 219).

(f) *Priority of access to unused portions of a quota.* In determining whether an alien shall have access to an unused preference portion of a quota after the preference portion of the quota to which he is primarily entitled has been exhausted, priority shall be given to aliens

IMMIGRATION AND NATIONALITY ACT

within each of the preference classes in the order of their preference as specified in the act, until the unused portion or portions of the quota shall have been exhausted. No quota number shall be made available for the issuance of an immigrant visa to a nonpreference quota immigrant if there is a sufficient demand on the part of qualified preference-quota immigrants to exhaust the quota.

§ 42.12 Annual determination of quota numbers available under each quota. For the purposes of section 203 (a) of the act and § 42.11, the full quota for each quota area for each quota year shall be considered to be the quota as proclaimed by the President under section 201 (b) or 202 (e) of the act, less the quota numbers authorized to be taken from, or otherwise previously used under such quota by authority of law before the beginning of each quota year, as provided in section 201 (e) of the act, or in any other provision of law.

§ 42.13 Determination of quota to which an immigrant is chargeable. (a) An immigrant who was born in a quota area shall be chargeable to the quota of such area, unless he is classifiable as a nonquota immigrant as defined in section 101 (a) (27) of the act, or unless he falls within one of the exceptions to the general rule of quota chargeability, as specified in section 202 of the act, or unless he is a Chinese person who is chargeable to the quota for Chinese as provided in § 42.15.

(b) A quota immigrant child accompanied by his alien parent may be charged to the quota of the accompanying parent, as provided in section 202 (a) (1) of the act, regardless of the ancestry of such child or of his accompanying alien parent, and regardless of whether the child was born in the Asia-Pacific triangle or in a subquota area inside or outside of such triangle. This rule shall apply in such manner as to permit a child born in a subquota area to be charged, as provided in section 202 (a) (1) of the act, to a governing country's quota with his accompanying parent who is chargeable to such governing country's quota, even if the child was born in a subquota area under the same governing country's quota and the subquota is exhausted.

(c) An alien born in a quota area in which neither of his parents was born and in which his parents were, at the time of such alien's birth, merely visiting temporarily, or in which one or both of his parents were stationed after having been sent there temporarily under orders or instructions of an employer, principal, or superior authority foreign to such country in connection with the business or profession of such employer, principal, or superior authority, may, except as otherwise provided in section 202 (a) (5) of the act, be charged to

SUPPLEMENT

the quota of either parent, as provided in section 202 (a) (4) of the act.

(d) A quota immigrant spouse who is not attributable by as much as one half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle may, as provided in section 202 (a) (2) of the act, be charged to the quota of his accompanying spouse, including the Asia-Pacific quota, the quota for Chinese persons, or any other Asia-Pacific triangle quota.

ASIANS

§ 42.14 *Asia-Pacific triangle*—(a) *Persons born in a quota area in the triangle.* A quota immigrant, regardless of his ancestry, who was born in a quota area lying wholly within the geographically delimited area specified in section 202 (b) of the act and referred to as the Asia-Pacific triangle, shall be chargeable to the quota of the quota area of his birth, unless he falls within one of the exceptions to the general rule of quota chargeability, as specified in section 202 of the act, or unless he is chargeable to the quota for Chinese persons as provided in § 42.15.

(b) *Persons indigenous to, but born outside of, the Asia-Pacific triangle.* A quota immigrant who was born outside of the Asia-Pacific triangle and who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle shall be chargeable to a quota as specified in section 202 (b) of the act, unless he is chargeable to the quota for Chinese persons as provided in § 42.15.

(c) *Asia-Pacific quota.* Quota immigrants in the following categories, other than Chinese persons, and except as provided in § 42.13 (b), shall be chargeable to the Asia-Pacific quota of one hundred annually:

(1) A quota immigrant attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle, if born within a colony or other dependent area situate wholly within said triangle;

(2) A quota immigrant born outside the Asia-Pacific triangle who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to one or more colonies or other dependent areas situate wholly within the Asia-Pacific triangle;

(3) A quota immigrant born outside the Asia-Pacific triangle who is attributable by as much as one-half of his ancestry to peoples indigenous to two or more separate quota areas situate wholly within the Asia-Pacific triangle; and

IMMIGRATION AND NATIONALITY ACT

(4) A quota immigrant born outside the Asia-Pacific triangle who is attributable by as much as one-half of his ancestry to peoples indigenous to a quota area or areas and one or more colonies and other dependent areas situate wholly within the Asia-Pacific triangle.

(d) No alien shall be chargeable to the Asia-Pacific quota, except one who falls within one of the categories enumerated under subparagraphs (1) to (4) inclusive, of paragraph (c) of this section, and who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle.

(e) The quota proclaimed for "Pacific Islands (trust territory, United States administered)" to which an immigrant is chargeable in accordance with the provisions of section 202 of the act shall be distinguished from the Asia-Pacific quota which is referred to in paragraph (c) of this section.

§ 42.15 Quotas for Chinese persons and for China—(a) *Quota for Chinese persons.* A Chinese person who is classifiable as a quota immigrant shall be chargeable, regardless of the place of his birth, to the quota for Chinese persons of 105 annually authorized under section 201 (a) of the act, unless such person is a child chargeable to the quota of an accompanying parent as provided in section 202 (a) (1) of the act.

(b) *Quota for China.* An alien, other than a Chinese person, who was born in China and who is classifiable as a quota immigrant shall be chargeable to the quota for China regardless of his ancestry, unless such alien falls within paragraph (1), (2), (3), or (4) of section 202 (a) of the act: *Provided*, That if such alien is attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle he may be excepted from chargeability to the quota for China only if he is a child chargeable to the quota of an accompanying parent as provided in section 202 (a) (1) of the act.

§ 42.16 Quota preferences applicable to quotas of quota areas within Asia-Pacific triangle. The provisions of section 203 (a) of the act concerning the classes of quota immigrants and the preferences within such classes, as described in § 42.11, shall apply to all quotas, including all quotas for quota areas within the Asia-Pacific triangle, which shall include the quota for Chinese persons.

§ 42.17 Nonquota status for natives of Asia-Pacific triangle: Exceptions. The provisions of section 101 (a) (27) of the act defining the nonquota classes, except the provisions of subparagraph (C) thereof relating to certain natives of Western Hemisphere countries, shall be applicable to qualified immigrants including Chinese persons

SUPPLEMENT

and others who are attributable by as much as one-half of their ancestry to a people or peoples indigenous to the Asia-Pacific triangle: *Provided*, That the child of an immigrant parent who is entitled to nonquota status under the provisions of section 101 (a) (27) (C) of the act, if accompanying or following to join such a parent, shall also be entitled to nonquota status under that section of the act, notwithstanding the fact that such child may be a Chinese person or may be attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle.

§ 42.18 *Subquotas*—(a) *Definition*. The term “subquota” refers to that portion of the quota of a governing country which may be made available, subject to a limitation of 100 annually, to quota immigrants born in any colony or other component or dependent area overseas from such governing country.

(b) *Immigrants chargeable to subquotas*. Any quota immigrant born in a colony or other component or dependent area overseas from the governing country shall be chargeable to the subquota of such country, except as provided in paragraph (c) of this section, or § 42.13 (b).

(c) *Exceptions to subquota chargeability*. (1) Any quota immigrant born in a colony or other component or dependent area overseas from the governing country, who is a Chinese person or who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle, shall not be chargeable to a subquota, but shall be chargeable to the Chinese quota if a Chinese person, or to another appropriate quota, as provided in section 202 (b) of the act, and §§ 42.14 and 42.15.

(2) A spouse who is an eligible quota immigrant, or a child regardless of ancestry, born in a subquota area accompanying an alien spouse or parent chargeable to the quota of the governing country of such area, may be charged to the quota of the governing country under the conditions specified in section 202 (a) (2) of the act, and not to the subquota if such subquota is exhausted: *Provided*, That this subparagraph shall not be applicable in the case of such an applicant who is within the provisions of subparagraph (1) of this paragraph.

(d) *Control of subquotas*. The numerical control of a subquota shall in the case of an oversubscribed quota of the governing country, be subject to the same limitations which apply to the quota of the governing country, including the ten percent monthly limitations upon the issuance of visas during the first ten months of each quota year and the ten percent monthly limitations shall be in relation to

IMMIGRATION AND NATIONALITY ACT

the whole quota and not merely based upon the subquota or subquotas.

(e) *Priority in issuing visas under subquotas.* The priority in the issuance of visas within each quota category to aliens chargeable to a subquota shall be determined by the registration priority of such aliens in relation to the whole quota of the governing country: *Provided*, That once a subquota has been exhausted for a particular quota year, no more quota visas may be issued during such quota year to aliens chargeable to such subquota, regardless of any preference status or priority of consideration to which they may otherwise be entitled, unless the provisions of § 42.13 (b) or paragraph (c) (2) of this section are applicable.

(f) *Priority of consideration under subquotas.* The order for consideration of the cases of registrants under each quota, which includes the subquota or subquotas of each quota, shall be determined in accordance with the provisions of section 203 (d) of the act.

WAITING LISTS

§ 42.20 *Immigrant waiting lists*—(a) *Quota or nonquota waiting lists.* Whenever it becomes administratively impracticable at any consular office to give consideration to, and take final action upon, the case of an applicant for a quota or a nonquota immigrant visa without a waiting period, each such applicant's priority shall be maintained by the registration of his name on an administrative waiting list at such office. Quota waiting lists shall be maintained for each quota and shall include aliens chargeable to each subquota in such manner as to show the priority date of registration within each of the preference or nonpreference classes, and to permit the transfer of the name of any applicant from one category to another without losing his original priority. Quota waiting lists shall not be required in cases of immigrants chargeable to undersubscribed quotas, but an administrative waiting list shall be established if the workload at the consular office requires a waiting period before final consideration may be given by the consular officer to the cases of immigrants chargeable to the undersubscribed quotas. Nonquota administrative waiting lists may, in the discretion of the consular officer, be maintained separately for each nonquota category or for all nonquota categories combined.

(b) *Place of registration.* Every alien who desires to have his name registered on a quota waiting list shall make application for registration at a United States consular office in the consular district in which he has his residence: *Provided*, That a consular officer shall, at the direction of the Secretary of State, or may in his discretion,

SUPPLEMENT

accept an application for registration from nonresidents of the consular district, including aliens in the United States who are entitled to have their names entered on a quota or subquota waiting list.

(c) *Registration prior to December 24, 1952.* (1) All persons whose names were registered on quota waiting lists on December 23, 1952, shall have their names transferred to the appropriate category of the waiting list for the quota, including the subquota, to which they are chargeable without losing the priority of their original registration, unless such registration is subject to cancellation under the provisions of § 42.23.

(2) In the case of an alien entitled to second preference status under the provisions of section 203 (a) (2) of the act and § 42.11 (b), who is the alien parent of a citizen of the United States and the beneficiary of a petition approved by the Attorney General prior to, and still valid on, December 24, 1952, the date of the approval of such petition shall be considered to be the date of such alien's registration priority, except in the case of an alien who is actually registered on the waiting list on a date preceding that of the approval of the petition, in which case the date of actual registration shall establish his priority. A valid petition as referred to in this subparagraph shall continue to be valid until December 24, 1953, except as otherwise provided in § 42.28.

(d) *Registration on or after December 24, 1952.* Except as provided in § 42.25 (b), the registration of a quota immigrant on a waiting list may be effected upon the basis of an application for registration properly executed by the immigrant and received in the mail room of the consular office from such immigrant, or by any clear indication of an intention to immigrate into the United States which was contemporaneously recorded in the files of an American consular office abroad or of the Department of State. When an application for registration is received at a consular office the date, as well as the hour and minute wherever practicable, of the receipt of such registration application form shall be noted thereon and shall constitute the registration priority under which the applicant's name shall be registered in the proper category on the appropriate waiting list.

§ 42.21 *Aliens included in single registration*—(a) *Principal and derivative registrants.* The application of a quota immigrant for registration on a waiting list shall be considered as automatically including any spouse he may have, and any unmarried son or daughter under twenty-one years of age such immigrant or his spouse may have, and who is residing regularly in the household of the principal registrant, at the time his turn is reached on the waiting list and he makes a formal application for an immigrant visa, regardless of

IMMIGRATION AND NATIONALITY ACT

whether such spouse, son or daughter was specifically named in his application for registration. Any other alien shall be registered separately and accorded a priority as of the date of such separate registration: *Provided*, That the provisions of this paragraph requiring a separate registration in the cases of aliens other than the spouse of a principal registrant and their unmarried sons or daughters under twenty-one years of age shall apply only to those aliens who register on a quota-waiting list on or after July 1, 1954, and shall not adversely affect any registration or registration privileges acquired prior to that date.

(b) *Termination of derivative registration.* The privilege of derivative registration accorded a spouse or child under the provisions of paragraph (a) of this section, whose name has not been previously recorded on a waiting list, shall terminate only upon the occurrence of any one of the conditions specified in § 42.23 for the removal of names from a quota-waiting list.

(c) *Conversion of derivative registration.* When an alien entitled to the privilege of derivative registration has exercised his privilege by having his name placed on a quota-waiting list as of the date of registration priority of the principal registrant, such alien shall be considered thereafter to be in the same position as any other alien who is registered on a quota-waiting list.

§ 42.22 *Aliens not to be registered or to retain registration on a quota-waiting list.* (a) Except as provided otherwise in this section, the following classes of aliens shall not have their names entered or retained on a quota or subquota waiting list:

(1) Aliens who enter the United States in violation of the immigration laws.

(2) Aliens who are in the United States in willful violation of their nonimmigrant status.

(3) Aliens who are within one of the classes of excludable aliens described in section 212 (a) (17) of the act, unless the Attorney General has consented to their reapplication for admission into the United States.

(4) Aliens who are in the United States as exchange visitors under the provisions of section 201 of the United States Information and Education Exchange Act of 1948, as amended. (62 Stat. 6; 66 Stat. 276.)

(b) Notwithstanding the provisions of paragraph (a) of this section, aliens who qualify under the preference specified in section 203 (a) (1) of the act shall have their names entered or retained on the appropriate quota or subquota waiting list as of the date the approved petition was filed with the Attorney General.

SUPPLEMENT

(c) Notwithstanding the provisions of paragraph (a) of this section and the provisions of § 42.25 (c), aliens whose cases fall within paragraph (a) (2) of this section and who qualify under the preference specified in section 203 (a) (2), (3), or (4) of the act shall have their names entered or retained on the appropriate quota or subquota waiting list as of the date of their departure from the United States following a willful violation of status.

(d) Notwithstanding the provisions of paragraph (a) of this section and the provisions of § 42.25 (c), aliens whose cases fall within paragraph (a) (3) of this section and who qualify under the preference specified in section 203 (a) (2), (3), or (4) of the act shall have their names entered or retained on the appropriate quota or subquota waiting list as of the date the approved petition was filed with the Attorney General but in no event earlier than the date of their deportation from the United States.

(e) The provisions of paragraphs (a), (c), and (d) of this section shall not be construed to affect adversely any registration priority acquired prior to June 30, 1955, on the basis of an approved second, third, or fourth preference petition, regardless of the alien's status in the United States.

§ 42.23 Removal of names of registrants from quota waiting list. The registration of a quota immigrant shall be cancelled under any of the following circumstances:

(a) The registrant dies;

(b) The registrant was erroneously listed on the waiting list;

(c) The registrant enters the United States in violation of the immigration laws;

(d) The registrant abandons his intention to immigrate to the United States. An alien who for any reason fails to apply formally or informally for a visa within 60 days after being duly notified that his name has been reached on the waiting list shall be considered to have abandoned his intention to immigrate: *Provided*, That any such alien who can establish to the satisfaction of the consular officer that his failure to apply formally or informally for a visa was for reasons beyond his control and for which he was not responsible may make an application for a visa under his original priority on the waiting list when the circumstances which prevented him from applying formally or informally for a visa cease to exist, or within 60 days thereafter;

(e) The registrant has been denied an immigrant visa on some ground which cannot be overcome by the presentation of further evidence or by a probable change in the circumstances of his case;

IMMIGRATION AND NATIONALITY ACT

(f) The registrant is issued an immigrant visa: *Provided*, That any alien receiving an immigrant visa who fails to use it for reasons beyond his control and for which he is not responsible, and who makes application for another visa in a subsequent quota year and within 60 days of the termination of the circumstances which prevented him from using the original visa, may be accorded his original priority on the waiting list for the purpose of making one additional application for a visa;

(g) The registrant is not eligible to retain his name on the waiting list by reason of the provisions of § 42.22.

ORDER OF PRIORITY OF CONSIDERATION

§ 42.25 *Priority for considering quota immigrant cases*—(a) *Priority in order of registration.* No immigrant within a preference category under a quota shall have his case considered before consideration is given to immigrants in a higher preference quota category as provided in section 203 (d), of the act, and no immigrant within any category under a quota shall have his case considered until after consideration shall have been given to other immigrants in the same category who have an earlier priority of registration on the chronological quota waiting list for such category.

(b) *Registration of first-preference immigrants.* The registration priority of a first-preference quota immigrant shall be determined by the date on which a petition was filed with the Attorney General for the immigration of such immigrant. An authorization received from the Secretary of State to grant first-preference quota immigrant status to the beneficiary of an approved petition shall be recorded at each consular office in the order of the date on which the petition was filed with the Attorney General and shall constitute the chronological registration record of such case on the quota waiting list, or on the administrative list if the quota is under-subscribed and the workload at the consular office necessitates an administrative waiting period.

(c) *Registration of other preference quota immigrants.* The registration priority of quota immigrants in the second, third and fourth preference classes shall be determined in each class in the chronological order in which such immigrants are registered on quota waiting lists at each consular office in the order of the receipt of their registration applications, as provided in § 42.20 (c) or in the chronological order in which the required petitions for the immigrants in such classes were filed with the Attorney General, whichever date is earlier.

(d) *Registration of nonpreference quota immigrants.* The registration priority of nonpreference quota immigrants shall be deter-

SUPPLEMENT

mined in each class by the chronological order in which the immigrants' names are registered on the appropriate quota waiting lists at each consular office in the order of the receipt of their registration applications as provided in § 42.20 (c).

(e) *Retention of registration priority.* An alien who ceased to have first, second, third, or fourth preference-quota-immigrant status shall retain his chronological registration priority which shall be transferred to any other category in which he may qualify, except to the first-preference-quota-immigrant category.

(f) *Registration priority of former applicants under the Refugee Relief Act.* The registration priority to which an alien is or was entitled under the Refugee Relief Act of 1953, as amended, as determined by (1) the date on which he was registered on a quota waiting list for the purposes of the Immigration and Nationality Act, (2) the date he actually applied for registration under the Refugee Relief Act of 1953, as amended, (3) the date on which an approved petition was filed with the Attorney General in his behalf, or (4) the date on which a verified assurance of employment, housing, and against becoming a public charge, or an assurance of adoption and proper care, was filed with the Department in his behalf, whichever date is earliest, shall be considered his registration priority on a quota waiting list for the purpose of the Immigration and Nationality Act if such alien has maintained a continuing intent to immigrate to the United States.

§ 42.26 *Procedure in granting preference status.* No alien shall be accorded consideration as a quota immigrant entitled to first, second, third, or fourth preference status unless the consular officer shall have received from the Immigration and Naturalization Service a petition filed and approved in accordance with the provisions of section 204 or section 205 of the act. Subject to the provisions of § 42.28, consular officers shall, upon receipt of such a petition, grant the status indicated in the petition, but further consideration of the case of such immigrant shall be in the order of his priority among other immigrants in the same classification as determined under the provisions of § 42.25.

§ 42.27 *Procedure in granting nonquota status in petition cases.* No alien shall be accorded consideration as a nonquota immigrant entitled to the status of minister of a religious denomination under the provisions of section 101 (a) (27) (F) (i) of the act, or to the status of a child or spouse of a citizen of the United States under the provisions of section 101 (a) (27) (A) of the act, unless the consular officer shall have received from the Immigration and

IMMIGRATION AND NATIONALITY ACT

Naturalization Service a petition filed and approved in accordance with the provisions of section 204 or section 205 of the act. Subject to the provisions of § 42.28, consular officers shall, upon receipt of such a petition, grant the status indicated in the petition, but further consideration of the case of such immigrant shall be in the order of his priority among other immigrants in the same classification as determined by the date on which the approved petition was filed with the Attorney General.

§ 42.28 *Suspension or termination of action in petition cases.*

(a) Consular officers shall suspend or terminate action in petition cases under any of the following circumstances:

(1) The consular officer knows or has reason to believe that the petition was approved erroneously, or that the approval of the petition was obtained by fraud, misrepresentation, or other unlawful means.

(2) As to a petition approved under the provisions of section 204 or section 214 (c) of the act:

(i) The beneficiary is an alien who has been granted the status of an immigrant under the provisions of section 101 (a) (27) (F) (i) of the act, and has not obtained an immigrant visa under the status approved within one year of the date of approval of the petition;

(ii) The beneficiary is an alien who has been granted the status of a nonimmigrant under the provisions of section 101 (a) (15) (H) of the act, and has not obtained a nonimmigrant visa under the status approved on or prior to the expiration date of approval shown on the approved petition;

(iii) The beneficiary is an alien who has been granted the status of a preference quota immigrant under the provisions of section 203 (a) (1) (A) of the act, and has not obtained an immigrant visa under the status approved on or prior to the expiration date shown on the approved petition. Any such petition which is terminated by the expiration of the period for which approval was given is subject to reaffirmation by the Attorney General for an additional period and is to be returned to the office of the Immigration and Naturalization Service which approved the petition with an appropriate explanation at such time as it appears that a quota number will be available within six months for the issuance of an immigrant visa to the beneficiary;

(iv) The petitioner dies, goes out of business, or files a written withdrawal of the petition before the beneficiary obtains an immigrant visa under the status approved.

(3) As to a petition approved under the provisions of section 205 of the act:

SUPPLEMENT

- (i) The beneficiary is an alien who has been granted the status of a nonquota immigrant under the provisions of section 101 (a) (27) (A) of the act, and has not obtained an immigrant visa under the status approved within two years of the date of the approval of the petition;
- (ii) The beneficiary is an alien who has been granted the status of a preference quota immigrant under the provisions of section 203 (a) (2), (3) or (4) of the act, and has not obtained an immigrant visa within three years of the date of approval of the petition, or during the quota year in which such three-year period expired;
- (iii) The petitioner loses his United States citizenship or his status as an alien lawfully admitted for permanent residence, whichever status was necessary for the approval of the petition, or dies, before the beneficiary obtains an immigrant visa under the status approved;
- (iv) The marriage between the petitioner and the spouse beneficiary is terminated by death, divorce or annulment before the beneficiary obtains an immigrant visa under the status approved;
- (v) The child beneficiary is married at the time he makes formal application for an immigrant visa under the status approved, or will reach the twenty-first anniversary of his birth before his arrival in the United States to apply for admission under the status approved. In any such case involving a son or daughter of a United States citizen petitioner, the approved petition will continue to be valid for the purposes of section 203 (a) (4) of the act until the expiration of three years from the date of its approval, or until the expiration of the quota year in which such three-year period expired;

(4) Approval of a petition for nonquota or preference quota status has been specifically revoked by the Attorney General, and notice of revocation has been communicated to the appropriate consular officer.

(5) The consular officer knows or has reason to believe that the beneficiary of an approved petition is not entitled, for any other reason, to receive a visa under the status approved.

(b) In suspending or terminating action in a petition case for any reason specified in this section, consular officers need not report such suspension or termination to the Department except in a case in which the consular officer knows or has reason to believe that the petition was approved erroneously, or that approval was obtained by fraud, misrepresentation, or other unlawful means.

EXEMPTIONS FROM IMMIGRANT VISA REQUIREMENTS

§ 42.29 Immigrants not required to obtain immigrant visas. The following classes of immigrants shall not be required to obtain immigrant visas:

IMMIGRATION AND NATIONALITY ACT

- (a) Immigrants in possession of valid reentry permits or resident alien's border-crossing identification cards.
- (b) An alien immigrant child born subsequent to the issuance of an immigrant visa to an accompanying parent, who will arrive in the United States and apply for admission during the period of validity of such visa.
- (c) An American Indian born in Canada and having at least fifty per centum of blood of the American Indian race.
- (d) An alien member of the armed forces of the United States who is in the uniform of, or who bears documents identifying him as a member of, such armed forces, who has been previously lawfully admitted for permanent residence, and who is proceeding to the United States under official orders or permit of such armed forces.
- (e) Any alien lawfully admitted for permanent residence who is not required under the regulations of the Attorney General to present a valid immigrant visa upon returning to the United States.
- (f) An alien who shall leave Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States, except as limited by the proviso contained in section 212 (d) (7) of the act in the cases of aliens admitted to Hawaii.

APPLICATIONS

§ 42.30 *Application for immigrant visa*—(a) *Form and content of application.* Every alien applying for an immigrant visa shall make application therefor on Form FS-256 or on Form FS-510 if he is applying at a consular office at which the use of Form FS-510 has been authorized. In the application the immigrant shall furnish the information required under the provisions of section 222 (a) of the act, and such additional information as may be required in the application form. The requirement of the act that an immigrant shall state in his application his race and ethnic classification does not pertain to his religion.

(b) *Persons required to make separate application.* (1) Each alien shall be required to make a separate application for an immigrant visa;

(2) An alien under 14 years of age, or one physically incapable of executing an application, may have his application for an immigrant visa executed in his behalf by a parent or guardian. If the alien has no parent or guardian, the application may be executed by any person having lawful custody of, or a legitimate interest in, such alien.

SUPPLEMENT

(c) *Personal appearance.* Every applicant for an immigrant visa, including an alien whose application is executed by another person, shall be required to appear personally at the consular office in connection with his application.

(d) *Photographs.* Each applicant shall be required to furnish, with his application for an immigrant visa 3 identical copies of his photograph. The photographs shall reflect a reasonable likeness of the alien as of the time they are furnished, be 1½ inches square, unmounted, show a full front view without head covering, and shall be printed on a light background. Each copy of such photograph shall be signed by the person making an application in such a way as not to obscure the alien's features. One copy of such photograph shall be attached to Form 256a and another to Form 256b. The third copy shall be enclosed in a sealed envelope which shall be appended to Form 256a.

(e) *Place of application.* Every alien applying for an immigrant visa shall make application at a United States consular office in the consular district in which he has his residence: *Provided*, That a consular officer shall at the direction of the Secretary of State, or may in his discretion, accept an application for an immigrant visa from an alien having no residence in a consular district if such alien is physically present therein.

(f) *Completion of visa application.* The consular officer to whom formal application is made for an immigrant visa shall make certain that all pertinent questions on the application form are answered and all applicable blank spaces are filled out. The consular officer shall have authority to require, in his discretion, that an applicant for an immigrant visa answer any questions pertaining to arrests, police or criminal record, or other facts in his case which are deemed to be material to his application. Such additional statements shall be attached to Form 256 and made a part of the alien's visa application and shall be covered by the alien's oath to, or affirmation of, the application. The applicant shall be required to read the application when it is completed, or it shall be read to him in his language, or he shall otherwise be apprised of its full contents, and he shall be asked whether he is willing to subscribe thereto. If the alien is not willing to subscribe to the application unless changes are made in the information stated therein, a new application containing the necessary information as stated by the alien shall be prepared.

(g) *Signature and seal.* Form 256 shall be signed in the presence of the consular officer by the applicant in the appropriate spaces in accordance with the manner in which he affixes his signature. The application shall be sworn to, or affirmed, by the applicant before

IMMIGRATION AND NATIONALITY ACT

the consular officer, who shall be satisfied that the applicant understands, and is willing to subscribe to, its contents. The consular officer shall then sign such application, indicate his title, and affix the seal of his office in the designated places.

(h) *Fee receipt notation.* The receipt of the prescribed fee (\$5) for the furnishing and verification of each application for an immigrant visa shall be evidenced by a rubber-stamped or typed notation placed on the reverse side of Form 256a opposite the space formerly reserved for the application fee number, and properly completed in the following form:

Service No. _____

Tariff Item No. _____

Fee Paid: U. S. \$_____

Local CY. equiv. _____

§ 42.31 *Immigrant preceding his family; informal examination of members of family.* (a) In the case of an applicant for an immigrant visa who proposes to precede his family to the United States, the consular officer may arrange for an informal examination of the other members of such applicant's family in order to determine whether there exists at that time any mental, physical, or other ground of ineligibility on their part to receive an immigrant visa;

(b) In the event any member of such family is found upon informal examination to be ineligible to receive an immigrant visa, the alien who intends to precede his family to the United States shall be so informed, and required by the consular officer to acknowledge in writing that he has been so informed;

(c) A determination in connection with an informal examination that an alien appears to be eligible for a visa shall carry no assurance that the alien concerned will be issued an immigrant visa in the future. The question of eligibility to receive such a visa is one which must finally be determined at the time of formal application.

§ 42.35 *Supporting documents in immigrant cases; burden of proof*—(a) *Burden of proof.* An alien who applies for an immigrant visa shall have the burden of establishing not only that he is entitled to the classification he seeks, but also that he is otherwise eligible to receive an immigrant visa under the immigration laws and the provisions of this part.

(b) *Supporting documents.* An alien applying for an immigrant visa shall be required to furnish with his application 2 copies of a police certificate; 2 certified copies of any existing prison record, military record, and record of his birth; and 2 certified copies of all

SUPPLEMENT

other records or documents concerning him or his case, which the consular officer may deem to be necessary.

(1) The term "police certificate," as used in this section, means a certification by the appropriate police authorities stating what their records show concerning the alien, including any and all arrests, the reasons therefor, and the disposition of each case of which there is a record.

(2) The term "prison record," as used in this section, means an official document containing a report of the applicant's record of confinement in a penal or correctional institution, including his demeanor during such confinement.

(3) The term "military record," as used in this section, means an official document containing a record of the applicant's service and conduct while in military service, including any convictions of crime before military tribunals as distinguished from other criminal courts. A certificate of discharge from the military forces or an enrollment book belonging to the applicant shall not be acceptable in lieu of the official military record unless it shows the alien's complete record while in military service as hereinbefore indicated in this subparagraph. The applicant may, however, in any event be required to present for inspection such a discharge certificate or enrollment book if deemed necessary by the consular officer to establish the applicant's eligibility to receive an immigrant visa.

(4) The term "record of birth," as used in this section, means a birth certificate showing the date and place of birth and the parentage of an alien, issued by the official custodian of birth records in the country of the applicant's birth and based upon the original registration of birth. An alien who has only one copy of his birth certificate and cannot obtain another may present two certified or photostatic copies thereof, but the original shall be offered for inspection by the consular officer who may return it to the alien.

(5) The term "other records or documents," as used in this section, includes official records which are pertinent to a determination of the applicant's identity, classification, or any other matter relating to his eligibility to receive an immigrant visa.

(c) *Unobtainable documents.* (1) If an immigrant establishes to the satisfaction of the consular officer that any document or record required under this section is unobtainable, the consular officer may permit the immigrant to submit, in lieu of such document or record, other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain. A document or other record shall be considered "unobtainable" if it cannot be procured without

IMMIGRATION AND NATIONALITY ACT

causing to the applicant or a member of his family actual hardship, other than normal delay and inconvenience.

(2) If the consular officer determines that a supporting document, as referred to in paragraph (b) of this section, actually is unobtainable, although the catalog of available documents prepared by the Department shows that it is available, he shall affix to each copy of the visa application a statement bearing his signature and the seal of his office and setting forth in detail his reasons for considering the record or document to be unobtainable, and for accepting the particular secondary evidence attached to the visa.

(d) *Authenticity of records and documents.* If a consular officer has reason to believe that a particular record or document required under the provisions of this section and submitted by an applicant is not authentic or has been altered or tampered with in any material manner, he shall require or take such action as may be necessary to determine its authenticity, or to ascertain the facts to which such document purports to relate in the alien's case.

PASSPORTS

NOTE: Under the provisions of section 212 (a) (26) of the Immigration and Nationality Act, a nonimmigrant alien who makes application for a visa or for admission into the United States is required to be in possession of a passport which is valid for a minimum period of six months from the date of expiration of the initial period of his admission into the United States or his contemplated initial period of stay authorizing him to return to the country from which he came or to proceed to and enter some other country during such period. The regulations of the Secretary of State (22 CFR 42.36 (a)) further provide that every alien who applies for an immigrant visa and who is subject to the passport requirement must be in possession of a passport which is valid for at least sixty days beyond the period of validity of the immigrant visa issued to him. By reason of the foregoing requirements, certain foreign governments have entered into an agreement with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign-issuing authority for a period of six months beyond the expiration date specified in the passport. These agreements have the effect of extending the validity period of the foreign passport an additional six months notwithstanding the expiration date indicated in the passport. Notice is hereby given that the following foreign governments have concluded such an agreement with the Government of the United States:

SUPPLEMENT

Austria (Reisepass only), Brazil, Canada, Ceylon, Cuba, Dominican Republic, Ethiopia, Germany (Reisepass only), Guatemala, Honduras, Iceland, India, Mexico, The Netherlands, Pakistan, Portugal, United Kingdom (nonimmigrants only).

§ 42.36 Passport requirement for immigrants—(a) Requirement. Except as provided in paragraph (b) of this section, every alien applying for an immigrant visa shall present to the consular officer a passport, as defined in section 101 (a) (30) of the act and § 42.1 (f), which shall be valid for at least sixty days beyond the period of validity of the immigrant visa issued to such alien.

(b) Exceptions. An immigrant within any of the following categories shall not be required to present a passport in applying for an immigrant visa:

(1) An immigrant who is a stateless person or an accompanying spouse or unmarried son or daughter under twenty-one years of age of such immigrant;

(2) An immigrant who is a national of, and is applying for an immigrant visa outside of, a communist-controlled country and who, because of his opposition to Communism, is unwilling to make application for a passport to, or unable to obtain a passport from, the government of such country;

(3) An immigrant lawfully admitted for permanent residence, who is returning to the United States from a temporary visit abroad unless such immigrant is applying for a visa in the country of which he is a national and the possession of a passport is required for departure from such country;

(4) An immigrant who is a member of the Armed Forces of the United States;

(5) An immigrant who is the parent, spouse, or unmarried son or daughter under twenty-one years of age, of a United States citizen unless such immigrant is applying for a visa in the country of which he is a national and the possession of a passport is required for departure from such country;

(6) An immigrant who is the spouse or unmarried son or daughter under twenty-one years of age of an alien lawfully admitted for permanent residence unless such immigrant is applying for a visa in the country of which he is a national and the possession of a passport is required for departure from such country;

(7) An immigrant who is qualified for and eligible to receive a first preference quota visa, or the accompanying spouse or unmarried son or daughter under twenty-one years of age of such immigrant unless such immigrant is applying for a visa in the country of

IMMIGRATION AND NATIONALITY ACT

which he is a national and the possession of a passport is required for departure from such country;

(8) An immigrant who has been preexamined in the United States by the Immigration and Naturalization Service and who is applying for an immigrant visa in Canada;

(9) An immigrant who establishes that he is unable to obtain a passport, who is not within any of the categories specified in the paragraph, and in whose case the passport requirement imposed by this section or by the regulations of the Attorney General shall have been waived by the Attorney General and the Secretary of State, as evidenced by a specific instruction from the Department to the consular officer.

(c) *Immigrants included in single passport.* A passport may include any person or persons whose inclusion is authorized under the laws or regulations of the issuing governmental authority: *Provided*, That a photograph of each such person fourteen years of age or over shall have been attached to the passport.

EXAMINATION AND FINGERPRINTING

§ 42.37 *Physical and mental examination of immigrants.* (a) Prior to the issuance of an immigrant visa to any alien, the consular officer shall require such alien to submit to a physical and mental examination in order to determine his eligibility to receive such a visa.

(b) At consular offices where medical officers of the United States Public Health Service are on duty, the alien's examination shall be conducted by such officers. If a medical officer of the United States Public Health Service is not available, the required examination shall be conducted by a reputable and competent physician selected by the alien from a panel of such physicians approved by the consular officer. The consular officer shall bring to the attention of the panel of physicians the regulations of the United States Public Health Service governing the medical examination of aliens, including laboratory tests, and shall advise visa applicants, when laboratory facilities for the required tests are not available, that such tests must be made at the United States port of entry and may be a basis for the alien's exclusion.

§ 42.38 *Registration and fingerprinting of immigrants*—(a) *Authority.* Every alien applying for an immigrant visa shall be fingerprinted on standard fingerprint Form AR-4, except a child under 14 years of age at the time of application for an immigrant visa.

(b) *Advance fingerprints.* An alien may be required by the consular officer at the time such alien makes preliminary or informal

SUPPLEMENT

application for an immigrant visa, to have a set of his fingerprints taken on Form AR-4 in the event such procedure is considered necessary for the purpose of identification, or investigation. Consular officers may, where necessary, use the fingerprint card of an applicant for an immigrant visa in order to ascertain from the appropriate local or any other authorities whether they have any pertinent information concerning the applicant's eligibility to receive a visa.

(c) *Alien registration.* Every alien executing an application for an immigrant visa on Form 256 is thereby automatically registered, as required by section 221 (b) of the act, if the visa is issued.

ISSUANCE OF IMMIGRANT VISAS

§ 42.40 *Authority to issue, refuse, and revoke, immigrant visas—*

(a) *Authority to issue.* Consular officers are authorized to issue immigrant visas in accordance with the authority contained in sections 221 (a) and 224 of the act, and in accordance with the procedure prescribed in § 42.41.

(b) *Authority to refuse.* Consular officers are authorized to refuse immigrant visas in accordance with the authority contained in section 221 (g) of the act. The term "reason to believe," as used in section 221 (g) of the act, shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive an immigrant visa as provided in the act and as implemented by the regulations contained in this part.

(c) *Authority to revoke.* Consular officers are authorized to revoke immigrant visas in accordance with the authority contained in section 221 (i) of the act and on one or more of the specific grounds set forth, and in accordance with the procedure specified in § 42.44.

§ 42.41 *Procedure in issuing immigrant visa—*(a) *Insertion of pertinent data.* In issuing an immigrant visa the pertinent information shall be inserted in the designated blank space provided on the visa side of Form FS-256 or on Form FS-511 at consular offices which have been authorized to use Form FS-511. The dates to be inserted in the appropriate spaces on the visa shall be in a form which shows the day, month, and year, in that order, and the name of the month shall be spelled out—such as: "24 December 1952." A symbol specified in § 42.3 shall be used to indicate the classification of the immigrant and the visa. If the visa is being issued upon the basis of a petition approved by the Attorney General, the number and date of approval of such petition shall be inserted in the space provided for the visa petition number on the visa form.

IMMIGRATION AND NATIONALITY ACT

(b) *Numbering.* Nonquota immigrant visas may be numbered in consecutive order at each consular office, beginning a new series on December 24, 1952, and thereafter on July 1 of each year, if the consular officer in charge considers the numbering of nonquota visas to be desirable. A quota immigrant visa shall bear the quota number assigned to the consular officer for use in issuing the visa to the alien concerned.

(c) *Fee receipt notation.* The receipt of the prescribed fee (\$20) for the issuance of each immigrant visa shall be evidenced by a rubber-stamped or typed notation properly completed in the same form as provided in § 42.30 (h), and placed on the visa part of Form 256a and 256b under the word "seal." This notation shall be made before the impression seal is affixed and the words "Fee No." shall be cancelled.

(d) *Signature and seal.* The consular officer who issues an immigrant visa shall affix his signature, indicate his title, and impress the seal of his office on the visa side of Form 256a in a manner which partly covers the photograph and the fee stamp. Thereupon, Form 256a shall become an immigrant visa and shall be issued by delivery to the immigrant or his authorized agent or representative.

(e) (1) *Notation in the immigrant's passport.* Upon the issuance of an immigrant visa to an alien who presents a passport issued by a government which is recognized de jure by the United States, the consular officer shall place a notation in the following form in such passport:

(2) *Passport of unrecognized government.* No seal, stamp, or notation of any kind shall be placed in a passport or other travel document issued by a government not recognized *de jure* by the United States.

INELIGIBLE IMMIGRANTS

§ 42.42 Classes of aliens ineligible to receive immigrant visas.

(a) The following implementation of section 212 of the act shall govern the issuance or refusal of immigrant visas in pertinent cases:

(1) *Feeble-mindedness.*

(2) *Insanity.*

SUPPLEMENT

- (3) *One or more attacks of insanity.*
- (4) *Psychopathic personality, epilepsy, or mental defect.*
- (5) *Narcotic drug addicts or chronic alcoholics.*
- (6) *Tuberculosis, leprosy, or dangerous contagious disease.* A determination of ineligibility to receive an immigrant visa under the provisions of sections 212 (a) (1) to (6), inclusive, of the act, shall be based upon the finding of a competent medical examiner as referred to in § 42.37: *Provided*, That in the case of an alien who applies for an immigrant visa at a consular office where no medical officer of the United States Public Health Service has been assigned or detailed, and the consular officer knows or has reason to believe that such alien is a drug addict, a chronic alcoholic, or is afflicted with psychopathic personality by reason of sexual deviation, a finding of ineligibility to receive an immigrant visa under the provisions of section 212 (a) (4) or (5) of the act may be based on facts or circumstances other than the finding of an examining physician.
- (7) *Physical defect, disease or disability affecting alien's ability to earn a living.* An alien within the purview of section 212 (a) (7) of the act may be issued an immigrant visa, if otherwise qualified therefor, upon receipt of notice by the consular officer from the Department of the giving of a bond or undertaking, as provided in section 221 (g) of the act.
- (8) *Paupers, professional beggars, or vagrants.*
- (9) *Crime involving moral turpitude.* (i) An alien shall not be ineligible to receive a visa under the provisions of section 212 (a) (9) of the act (a) solely by reason of the conviction of a single offense which, if committed in the United States, would be a misdemeanor punishable by imprisonment not to exceed one year, and for which the penalty actually imposed was imprisonment not to exceed six months or a fine not to exceed \$500, or both; or (b) solely by reason of the admission of the commission of a single offense or the commission of acts constituting the essential elements of a single offense which, if committed in the United States, would be a misdemeanor punishable by imprisonment not to exceed one year.
- (ii) The term "purely political offense," as used in sections 212 (a) (9) and (10) of the act, shall include offenses which, the evidence presented to the consular officer clearly establishes, were involved in convictions obviously based on trumped-up charges or predicated upon repressive measures against racial, religious, or political minorities. The admission by an immigrant that he has committed acts which would have been punishable under the laws or decrees of a foreign country shall be considered an admission of the commission of a purely political offense within the meaning of section 212 (a)

IMMIGRATION AND NATIONALITY ACT

(9) of the act if the evidence presented to the consular officer clearly establishes that such laws or decrees were predicated upon the repression of racial, religious, or political minorities. The mere fact that an alien is or was a member of a racial, religious, or political minority shall not be considered as sufficient in itself to warrant a conclusion that the crime of which he was convicted was a purely political offense.

(10) *Conviction of two or more offenses.*

(11) *Polygamy.* Aliens who are members of religious organizations which tolerate polygamy are not ineligible to receive immigrant visas under the provisions of section 212 (a) (11) of the act, unless such aliens themselves are polygamists, or unless they practice or advocate the practice of polygamy.

(12) *Prostitutes.* The fact that an immigrant may have ceased to engage in prostitution shall not remove the immigrant's ineligibility to receive a visa under the provisions of section 212 (a) (12) of the act.

(13) *Immoral sexual act.*

(14) *Skilled or unskilled laborers*—(i) *Certification by Secretary of Labor required.* No immigrant shall be considered ineligible to receive a visa under the provisions of section 212 (a) (14) of the act, even if he is migrating to the United States under a contract or other prearrangement of employment of any kind in the United States, until the Secretary of Labor shall have made the certification to the Secretary of State and the Attorney General as provided in clauses (A) or (B) of section 212 (a) (14) of the act concerning the availability of such labor in the locality of the alien's destination, or the effect of the immigration of such foreign labor on conditions of workers in the United States. The existence or the cancellation of such a certification by the Secretary of Labor shall be recognized by the consular officer only upon the basis of an official notification from the Department.

(ii) *Prearranged employment immaterial to ineligibility.* When the Secretary of Labor makes the certification referred to in subdivision (i) of this subparagraph, with respect to a particular occupation, the provisions of section 212 (a) (14) of the act shall apply to an immigrant who is seeking to enter the United States for the purpose of performing skilled or unskilled labor, even if such immigrant has no offer, promise, contract of employment, or any other form of pre-arranged employment in such occupation, unless such alien falls within one of the exempt categories specified in subdivision (iii) of this subparagraph.

SUPPLEMENT

(iii) *Exemptions.* Notwithstanding the fact that a consular officer has been officially notified of a determination and certification by the Secretary of Labor, as referred to in subdivision (i) of this subparagraph, the provisions of section 212 (a) (14) of the act shall have no application to the following classes of immigrants:

(a) Parents, spouses, or sons and daughters regardless of age or marital status, of United States citizens;

(b) Parents, spouses, or children of aliens lawfully admitted to the United States for permanent residence;

(c) Brothers or sisters of United States citizens;

(d) Immigrants whose services are determined by the Attorney General to be needed urgently in the United States because of the high education, technical training, specialized experience, or exceptional ability of such immigrants, and to be substantially beneficial prospectively to the national economy, cultural interests, or welfare of the United States;

(e) Aliens classifiable as nonquota immigrants under the provisions of sections 101 (a) (27) (B), (F), and (G) of the act.

(15) *Public charges.* (i) Any conclusion that an immigrant is ineligible to receive a visa under the provisions of section 212 (a) (15) of the act shall be predicated upon the existence of facts or circumstances which indicate a reasonable probability that the immigrant will become a charge upon the public after entry into the United States.

(ii) A petition approved under the provisions of section 205 of the act shall have no bearing on the question of whether the beneficiary thereof will become a public charge after his arrival in the United States.

(iii) An alien within the purview of section 212 (a) (15) of the act may be issued an immigrant visa, if otherwise qualified therefor, upon receipt of notice by the consular officer from the Department of the giving of a bond or undertaking, as provided in section 221 (g) of the act.

(16) *Aliens excluded and deported.* An alien who was excluded and deported from the United States within the meaning of section 212 (a) (16) of the act shall be required to obtain permission from the Attorney General to reapply for admission if he applies for a visa within one year from the date of his deportation.

(17) *Aliens arrested and deported or removed from the United States.* (i) An alien who was arrested and deported from the United States, or who was removed from the United States within the meaning of section 212 (a) (17) of the act shall be required to obtain

IMMIGRATION AND NATIONALITY ACT

permission from the Attorney General to reapply for admission into the United States, regardless of the period of time which may have elapsed since his deportation or removal.

(ii) No alien who is required to obtain permission from the Attorney General to reapply for admission, as provided in sections 212 (a) (16) and (17) of the act, shall be considered eligible to receive an immigration visa until such alien shall have obtained the necessary permission to reapply for admission, and shall have been found to be otherwise eligible to receive an immigrant visa under the act and the regulations contained in this part.

(18) *Stowaways.*

(19) *Fraud and misrepresentation.* (i) An alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation by fraud or by willfully misrepresenting a material fact for the purpose of gaining admission into the United States, regardless of whether such fraud or misrepresentation occurred before or after December 24, 1952, shall be ineligible to receive an immigrant visa under the provisions of section 212 (a) (19) of the act: *Provided*, That the provisions of this subdivision shall not be applicable in the case of a bona fide refugee if such fraud or misrepresentation was committed in connection with the alien's entry into, or sojourn in, a foreign country and consisted of obtaining travel documents or of misrepresenting his place of birth, and the refugee was in fear of being repatriated to his former homeland if he had disclosed the facts in his case: *Provided further*, That such fraud or misrepresentation was not committed for the purpose of evading the quota restrictions of the United States immigration laws, or investigation of the alien's record at the place of his former residence or elsewhere in connection with an application for a United States visa. The fact that an alien may be or may have been a bona fide refugee shall not be considered as sufficient in itself to remove the alien from any excludable class.

(ii) Subject to the conditions stated in subdivision (i) of this subparagraph, an alien who, upon review of his case, is found by the consular officer to have made a willful misrepresentation within the meaning of section 10 of the Displaced Persons Act of 1948, as amended (62 Stat. 1013, 64 Stat. 225; 50 App. U.S.C. 1950), for the purpose of gaining admission into the United States as an eligible displaced person, or to have made a material misrepresentation within the meaning of section 11 (e) of the Refugee Relief Act of 1953, as amended (67 Stat. 405, 8 U. S. C. 1182) for the purpose of gaining admission into the United States as an alien eligible thereunder, shall be considered ineligible to receive an immigrant visa under the provisions of section 212 (a) (19) of the act.

SUPPLEMENT

- (20) *Immigrant documentary requirements.*
- (21) *Noncompliance with section 203 of the act.*
- (22) *Ineligibility to citizenship.*
- (23) *Illicit traffic in narcotic drugs.*
- (24) *Aliens arriving in foreign contiguous territory or adjacent islands on nonsignatory or noncomplying transportation lines.* The provisions of section 212 (a) (24) of the act shall not be applicable to the following classes of immigrants:
 - (i) Aliens who are described in section 101 (a) (27) (B) of the act;
 - (ii) Aliens who are native-born citizens of countries enumerated in section 101 (a) (27) (C) of the act;
 - (iii) Aliens who, prior to December 24, 1952, arrived in one of the adjacent islands from which they are seeking to enter the United States;
 - (iv) Aliens who are natives of adjacent islands or foreign contiguous territory and who are seeking to enter the United States directly from an adjacent island or from foreign contiguous territory;
 - (v) Aliens who proceeded from one adjacent island or foreign contiguous territory to another by signatory carrier and who are seeking to enter the United States from the last island or territory, regardless of the method by which they first entered an adjacent island or foreign contiguous territory;
 - (vi) Aliens who proceeded from the United States by nonsignatory carrier to adjacent islands or foreign contiguous territory from which they seek to reenter the United States: *Provided*, That such aliens, as of the time of their last entry into the United States, would not have been ineligible to receive an immigrant visa under the provisions of section 212 (a) (24) of the act.
- (25) *Illiterates.*
- (26) *Nonimmigrant documentary requirements.*
- (27) *Activities prejudicial to the public interest, or endangering the welfare, safety or security of the United States.*
- (28) *Other subversive classes*—(i) *Members or affiliates.* The provisions of section 212 (a) (28) of the act shall be considered to relate to the ineligibility of aliens to receive visas because of their present or former voluntary membership in, or affiliation with, the classes described therein, including voluntary membership in, or affiliation with, the proscribed parties, organization, and groups as specified therein, regardless of the purpose of such aliens in coming to the United States.
 - (a) The term "affiliate," as used in section 212 (a) (28) of the act with reference to an organization, means an organization sub-

IMMIGRATION AND NATIONALITY ACT

stantially directed, dominated, or controlled by one of the parties within the statutory proscription, which is or was used or operated by such party to help maintain its control over the country, or to help disseminate its economic and governmental doctrines or ideology;

(b) Service, whether voluntary or not, in the armed forces of any country shall not be regarded, of itself, as constituting or establishing an alien's membership in, or affiliation with, any proscribed party or organization, and shall not, of itself, constitute a ground of ineligibility to receive a visa;

(c) Voluntary service in a political capacity, such as a political commissar with the armed forces of any country, shall constitute affiliation with the political party or organization in power at the time of such service;

(d) Membership or affiliation, whether voluntary or not, which ended before an alien reached his sixteenth birthday shall not constitute a ground of ineligibility to receive a visa. If an alien continues or continued his membership or affiliation beyond his sixteenth birthday, the question whether his membership or affiliation after his sixteenth birthday is or was voluntary shall be determined as in the case of any other alien. In that connection, the facts relating to his activities only after his sixteenth birthday may be considered in determining whether the continuation of his membership or affiliation is or was voluntary;

(e) The term "operation of law," as used in section 212 (a) (28) (I) of the act, shall include any case wherein the alien without his acquiescence automatically becomes or became a member or affiliate of a proscribed party or organization by official act, proclamation, order, edict, or decree.

(ii) *Totalitarianism.* In accordance with the definition of "totalitarian party" contained in section 101 (a) (37) of the act, former or present voluntary members of, or aliens who were, or are, voluntarily affiliated with a non-communist party, organization, or group, or of any section, subsidiary, branch, affiliate or subdivision thereof, which during the time of its existence did not or does not advocate the establishment in the United States of a totalitarian dictatorship, shall not be considered ineligible under the provisions of section 212 (a) (28) of the act to receive visas, unless such aliens are known or believed by the consular officer to advocate, or to have advocated, personally, the establishment in the United States of a totalitarian dictatorship or totalitarianism, as defined in the act. Aliens who are, or have been, voluntary members of, or voluntarily affiliated with, the Communist party, or any of its sections, subsidiaries, branches, affiliates, or subdivisions, in any country, shall be considered, as specifi-

SUPPLEMENT

cally declared by the act, to be ineligible to receive visas, except as provided in subdivision (iii) of this subparagraph. If any other party is found to be a "totalitarian party," as defined in section 101 (a) (37) of the act, former or present voluntary membership in or affiliation with such party, or any of its sections, subsidiaries, branches, affiliates, or subdivisions, shall render an alien ineligible to receive a visa, except as provided in subdivision (iii) of this subparagraph.

(iii) *Defectors.* The term "defector" includes an alien who was a voluntary member of, or was voluntarily affiliated with, a proscribed party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, which exists, as well as a proscribed party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, which no longer exists but which did exist within the period of the last 5 years prior to the date of the application for a visa. The five-year period of defection required by the provisions of section 212 (a) (28) (I) (ii) of the act shall be considered as having begun to run from the established date of an alien's cessation of voluntary membership or affiliation or from the date such party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, ceased or ceases to exist. The words "actively opposed," as used in section 212 (a) (28) (I) (ii) of the act, shall be considered as embracing speeches, writings, and other overt or covert activities, during a period of at least 5 years prior to the application for a visa, in opposition to the doctrine, program, principles, and ideology of the party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, of which the alien was formerly a member or affiliate. An alien shall not be required, except in questionable circumstances, to show that he has actively opposed the doctrine, program, principles, and ideology of a proscribed party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof during the time it did not exist. However, such alien shall be required to show that during the period of non-existence of the party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, he did not personally advocate the doctrine, program, principles, and ideology of such party or organization, or of the section, subsidiary, branch, or affiliate or subdivision thereof, within the meaning of the act.

(iv) *Public interest with regard to visas.* Consular officers shall maintain a coordinated and uniform interpretation and appraisal of what constitutes the public interest in issuing or refusing visas to defectors. Such coordination and uniformity shall be accomplished by a reference of the consular officer's opinion to the Secretary of State for possible consultation with the Attorney General.

IMMIGRATION AND NATIONALITY ACT

(29) *Activities relating to espionage, sabotage, public disorder, or other subversive activity.*

(30) *Alien accompanying another alien order excluded and deported.*

(31) *Alien contributing to illegal entry.*

(b) *Failure of application to comply with act.* An immigrant's visa application shall be considered as failing to comply with the provisions of the act if:

(1) The applicant fails to furnish the information to be included in such application as required by the act and the regulations contained in this part.

(2) Such application contains a false or incorrect statement.

(3) Such application is not supported by the necessary documents required under the provisions of the act or the regulations contained in this part.

(4) The applicant refuses to be fingerprinted as required by the act.

(5) The necessary fee is not paid for such application or for the immigrant visa.

(6) The alien fails to swear to, or affirm, the applicant before the consular officer.

(7) The visa application otherwise fails to meet the specific requirements of the act for reasons for which the alien is responsible.

(c) *Former exchange visitors.* (1) No alien who was admitted into the United States subsequent to June 4, 1956, as an exchange visitor, or who otherwise acquired the status of an exchange visitor subsequent to June 4, 1956, including any alien granted an extension of the period of his temporary admission subsequent to the effective date of this regulation, shall be eligible to apply for and receive an immigrant visa notwithstanding the provisions of section 203 (b), (c), or (d) of the act, or the provisions of § 42.25 unless (i) the consular officer is satisfied that such alien has resided and been physically present abroad for an aggregate of at least two years since his departure from the United States following the termination of his exchange-visitor status in a country or countries cooperating in the exchange-visitor program, or (ii) the requirements of this subparagraph are waived as provided in section 201 (b) of the United States Information and Educational Exchange Act of 1948, as amended. (See § 41.102 of this chapter in cases of former exchange visitors who apply for nonimmigrant "H" visas.)

(2) Notwithstanding the provisions of subparagraph (1) of this paragraph, the requirement of a two-year residence and physical

SUPPLEMENT

presence abroad shall not apply in the case of an alien who was in the United States as an exchange visitor on or before June 4, 1956, who proceeded abroad temporarily on a personal visit or for reasons related to his exchange-visitor program, and who was readmitted into the United States subsequent to June 4, 1956, for the remainder of the period of authorized stay granted prior to the effective date of this regulation to continue his participation in the exchange-visitor program with which he was connected at the time of his departure from the United States.

REFUSAL AND REVOCATION OF IMMIGRANT VISAS

§ 42.43 *Procedure in refusing immigrant visas.* (a) No immigrant visa, quota or nonquota, shall be issued to an alien if the consular officer is prohibited under the provisions of section 221 (g) of the act, from issuing a visa to such alien.

(b) When an immigrant visa is refused, a memorandum of refusal shall be prepared on Form 290 and retained in the appropriate consular file. The action of refusing an immigrant visa shall be reviewed by the consular officer in charge of visa work at the post, and if he concurs in the refusal he shall countersign the memorandum of refusal. If the consular officer in charge of visa work or the principal officer at the post does not concur in the refusal, he shall refer the case to the Department for an advisory opinion.

(c) If upon preliminary examination and after being informed of the consular officer's determination of his ineligibility to receive a visa an applicant decides not to execute a formal visa application, such a circumstance shall, for the purposes of this part, constitute an informal refusal of an immigrant visa. If an applicant has executed a formal application for an immigrant visa on Form 256 and has paid the application fee, a determination by the consular officer of the applicant's ineligibility to receive a visa shall, for the purposes of this part, constitute a formal refusal of an immigrant visa.

(d) In formally refusing an immigrant visa the consular officer shall write or stamp diagonally across the visa side of Form 256a and Form 256b in red ink the words "Visa refused under authority of _____" (insert specific provision or provisions of law or regulation on which refusal is based). This notation shall be signed and dated by the consular officer refusing the visa. The application fee stamp shall be mutilated. Form 256a shall be delivered to the alien and Form 256b shall be retained in the consular file. The original of any supporting document submitted by the alien with his application may be returned to him if not required to be attached to Form 256.

IMMIGRATION AND NATIONALITY ACT

§ 42.44 *Revocation of immigrant visas*—(a) *Grounds for revocation.* Consular officers are authorized to revoke an immigrant visa under the following circumstances:

(1) The consular officer knows, or after investigation is satisfied, that the visa was procured by fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means; or

(2) The consular officer obtains information establishing that the alien was otherwise ineligible to receive the particular visa at the time it was issued or that, subsequent to the issuance of the visa, a ground of ineligibility has arisen in the alien's case.

(b) *Notice of revocation.* (1) Notice of revocation shall, if practicable, be given to the alien at his last known address prior to his departure for the United States. Whenever circumstances permit, an alien shall be given an opportunity to show why he believes revocation to be, or to have been, unwarranted.

(2) Notice of revocation shall be given to the master, commanding officer, agent, owner, charterer, or consignee of the carrier or transportation line on which the alien is known or believed to intend to travel to the United States.

(c) *Report of revocation.* A full report concerning the revocation of an immigrant visa shall be communicated to the Department for transmission to the Attorney General. A copy of such report shall be sent to the consular office which issued the visa if the revocation is effected by any other consular office upon its own initiative, upon instruction of the issuing office, or upon instructions from the Department. If it is not practicable to give the alien notice of revocation prior to his departure for the United States, the full report shall explain the circumstances and shall be submitted promptly to the Department for transmission to the Attorney General.

(d) *Surrender of revoked visa.* Upon receiving notice of revocation of his immigrant visa, the alien shall be requested to surrender Form 256a to the consular office indicated in the notice, for cancellation of the visa. The word "revoked" shall be written plainly on the visa by the consular officer, who shall sign and date such notation. Appropriate notation of the action taken, including a statement of the reason therefor, shall be made on Form 256b or on an appended memorandum. Any notation in the alien's passport concerning the issuance of the visa shall be cancelled.

(e) *Disposition of revoked visa quota number.* A quota number which has been used in issuing an immigrant visa may not be used again in issuing an immigrant visa to another alien, and such number

SUPPLEMENT

need not be returned to the Department even if the immigrant visa is revoked, lost, stolen, destroyed, or expires without being used.

§ 42.45 Disposition of supporting documents. (a) Documents furnished in support of an application for an immigrant visa, other than those required to be permanently attached to Form 256, may, in the discretion of the consular officer, be returned to the person furnishing them. An alien shall not be given documents of a personal or confidential nature furnished to the consular officer directly by the alien's sponsor or other person, but such documents may be returned to the person furnishing them if they are irreplaceable. If such documents are returned, the consular officer shall prepare and attach to Form 256b a memorandum briefly summarizing the contents of the documents and the circumstances of their return.

(b) *Furnishing visa records for court proceedings.* Upon receipt by a consular officer of a request to furnish information from a visa file or record for use in court proceedings, as contemplated in section 222 (f) of the act, the consular officer shall submit such information with a full report to the Department.

(c) *Visa revoked, mutilated, or expired.* An immigrant visa which has expired, or which has been revoked or mutilated, shall, whenever practicable, be taken up, endorsed with an appropriate notation, and filed with the Form 256b at the consular office where the visa was originally issued. In the event such a visa is taken up at an office other than the issuing office, it shall be forwarded to such issuing office.

§ 42.46 Refund of immigrant visa fee. The fee of twenty dollars (\$20.00) collected for the issuance of an immigrant visa shall not be refunded without specific authorization from the Department. In requesting such authorization the consular officer shall state in his communication the basis for the proposed refund, indicating clearly whether the visa was issued through some fault of the applicant or of the consular officer.

VALIDITY AND REVALIDATION

§ 42.47 Validity of immigrant visa. (a) The period of validity of an immigrant visa, quota or nonquota, shall not exceed four months, beginning with the date of issuance.

(b) If the visa was originally issued with a period of validity of less than four months, such period may be extended up to but not exceeding four months from the date of issuance of the visa. If an immigrant applies for an extension of the period of validity of his visa at a consular office other than the issuing office, the consular officer shall, unless he is satisfied beyond any doubt that the alien is eligible for the extension, communicate with the issuing office to

IMMIGRATION AND NATIONALITY ACT

ascertain if any objection is perceived to such extension. In extending the period of validity of an immigrant visa, the consular officer shall make appropriate notation of the new expiration date of the visa, affix his signature, indicate his title, and impress the seal of his office thereon.

(c) No fee shall be charged for extending the period of validity of an immigrant visa.

(d) An alien who is returning to Hawaii from a temporary visit abroad, and who (1) establishes that he entered Hawaii without an immigration visa between May 1, 1934, and July 3, 1946, inclusive, pursuant to the last sentence of section 8 (a) (1) of the act of March 24, 1934, as amended (48 Stat. 456), and that he was on the date of such entry a citizen of the Philippine Islands, or (2) establishes that he was admitted to Hawaii as a national of the United States, shall be considered classifiable as a nonquota immigrant under the provisions of section 101 (a) (27) (B) of the act, and, if otherwise qualified, shall be issued a nonquota immigrant visa limited in validity to application for admission only to Hawaii. *Provided*, That this limitation shall not apply in the case of an alien who is within a class declared to be nonquota immigrants under the provisions of section 101 (a) (27) of the act, other than subparagraph (C) thereof, and other than subparagraph (B) thereof in the case of an alien admitted to Hawaii only and subject to the restrictions prescribed in section 212 (d) (7) of the act. In any case in which a visa is limited in validity to application for admission only to Hawaii, such limitation shall be noted conspicuously on the face of the visa.

§ 42.48 *Issuance of new or replace immigrant visa*—(a) *Nonquota immigrant visa*. (1) A nonquota immigrant who establishes that his visa has been lost or mutilated, or has expired, may be issued a new nonquota immigrant visa at the same or any other consular office upon payment of the statutory application and visa fees: *Provided*, That the immigrant is again found to be qualified to receive such a visa under the immigration laws and regulations.

(2) Prior to issuing to an alien a new nonquota immigrant visa at a consular office other than that which issued the original visa, the consular officer shall communicate with the original visa-issuing office to ascertain if any reason is known why a new visa should not be issued.

(3) In the event a new nonquota immigrant visa is issued as provided in subparagraph (1) of this paragraph, such visa shall be given a new number in the series of nonquota immigrant visas issued at the consular office if that office numbers nonquota visas.

SUPPLEMENT

(b) *Replace quota immigrant visa.* (1) A quota immigrant who establishes that his visa has been lost or mutilated, or that he was otherwise unable to use it during the period of its validity because of reasons beyond his control and for which he was not responsible, may be issued a replace quota immigrant visa under the original quota number during the same quota year in which the original visa was issued, upon payment anew of the statutory application and visa fees: *Provided*, That the immigrant is otherwise qualified to receive such a visa under the immigration laws and regulations and the consular officer is in possession of the duplicate signed consular-file copy of the original visa.

(2) Prior to issuing a replace quota immigrant visa to an alien whose original immigrant visa was issued at some other consular office, the consular officer shall communicate with such other office to ascertain if any reason is known why a replace visa should not be issued.

(3) In issuing a replace quota immigrant visa, as provided in subparagraph (1) of this paragraph, the word "REPLACE" shall be inserted on Forms 256a and 256b before the word "IMMIGRANT" in the title of the visa.

(4) An immigration visa issued before December 24, 1952, may not be replaced on or after that date, but the immigrant may be issued an immigrant visa under the act and the regulations contained in this part, under the same quota number before June 30, 1953, upon payment of the new application and visa fees.

TRANSFER OF PENDING CASES

§ 42.49 *Transfer of cases.* (a) The case of an applicant for an immigrant visa which is pending at one consular office may be transferred to another consular office at the applicant's request and risk if (1) there is reasonable justification for the transfer of the applicant's file, and (2) the receiving consular office has no reason to believe that the alien will not appear personally to apply for a visa.

(b) The transferring office shall include in the transfer of a case to another office, or shall forward as soon as possible thereafter, a report of clearance or nonclearance concerning the alien in the district of his former residence.

(c) The transfer of a case shall include any authorization to grant nonquota or preference quota status based upon an approved petition, the alien's registration priority, and all documents in the alien's file.

(d) In no case shall a quota number be transferred from one consular office to another. A quota number allotted by the Department

IMMIGRATION AND NATIONALITY ACT

for use in issuing an immigrant visa to an alien whose case is being transferred to another office shall be returned to the Department.

Page 597

STATEMENT OF ORGANIZATION IMMIGRATION AND
NATURALIZATION SERVICE

§ 1.10 *Organization and delegations.* The Attorney General has delegated to the Commissioner, the principal officer of the Immigration and Naturalization Service, authority to direct the administration of the Service and enforce the Act and all other laws relating to immigration and naturalization, except the authority delegated to the Board of Immigration Appeals. The Commissioner has delegated his authority to the following-described officers of the Service, within their respective operational areas of activity: Associate Commissioner, Operations; Associate Commissioner, Management; Deputy Associate Commissioner, Domestic Control; Deputy Associate Commissioner, Travel Control; Deputy Associate Commissioner, Security; Deputy Associate Commissioner, Administrative Services; Assistant Commissioner, Investigations; Assistant Commissioner, Enforcement; Assistant Commissioner, Examinations; Assistant Commissioner, Special Projects; Assistant Commissioner, Inspections; Assistant Commissioner, Field Inspection and Security; Assistant Commissioner, Naturalization; Assistant Commissioner, Administration; Assistant Commissioner, Detention and Deportation; General Counsel; Chief Special Inquiry Officer; regional commissioner; district directors; special inquiry officers.

Page 658

Section 1 (a). Notwithstanding the provisions of section 20 of the Refugee Relief Act of 1953, as amended (67 Stat. 400; 68 Stat. 1044), special nonquota immigrant visas authorized to be issued under section 3 of that act which remained unissued on January 1, 1957, shall be allotted, and may be issued by consular officers as defined in the Immigration and Nationality Act in the following manner:

- (1) Not to exceed 2,500 visas to aliens described in paragraph (1) of section 4 (a) of the Refugee Relief Act, as amended;
- (2) Not to exceed 1,600 visas to aliens described in paragraph (9) or (10) of such section 4 (a);
- (3) All the rest and remainder of said visas to aliens who are refugee-escapees as defined in subsection (c).

(b) The allotments provided in subsection (a) of this section shall be available for the issuance of immigrant visas to the spouses and unmarried sons or daughters under 21 years of age, including step-

SUPPLEMENT

sons or stepdaughters and sons or daughters adopted prior to July 1, 1957, of persons referred to in subsection (a) of this section if accompanying them: *Provided*, That each such alien, as described in this section, is found to be eligible to be issued an immigrant visa and to be admitted to the United States under the provisions of the Immigration and Nationality Act: *Provided further*, That all special nonquota immigrant visas authorized to be issued under this section shall be issued in accordance with the provisions of section 221 of the Immigration and Nationality Act: *Provided further*, That a quota number is not available to such alien at the time of his application for a visa.

(c) (1) For purposes of subsection (a) the term "refugee-escapee" means any alien who, because of persecution or fear of persecution on account of race, religion or political opinion has fled or shall flee (A) from any Communist, Communist-dominated, or Communist-occupied area, or (B) from any country within the general area of the Middle East, and who cannot return to such area, or to such country, on account of race, religion, or political opinion.

(2) For the purposes of this section, the term "general area of the Middle East" means the area between and including (1) Libya on the west (2) Turkey on the north, (3) Pakistan on the east and (4) Saudi Arabia and Ethiopia on the south.

(d) Except as otherwise provided in subsection (a) of this section, nothing in this section shall be held to extend the Refugee Relief Act of 1953, as amended (67 Stat. 400; 68 Stat. 1044), and nothing in this section shall be held to authorize the issuance of special nonquota immigrant visas in excess of the number provided in section 3 of that act.

§ 481.1 Application. An application for adjustment of status under section 6 of the Refugee Relief Act of 1953, as amended (67 Stat. 403, 68 Stat. 1044; 50 U. S. C. App. 1971d), shall be submitted in accordance with the provisions of this chapter and that act on Form I-233.

§ 481.2 Who may apply. Any alien (including one admitted as a student under section 4 (e) of the Immigration Act of 1924) who entered the United States in good faith as a nonimmigrant and who believes that he meets the eligibility requirements set forth in section 6 of the Refugee Relief Act of 1953, as amended, may apply for adjustment of status: *Provided*, That an alien who (a) has a nonimmigrant status under paragraph (15) (A), (15) (E), or (15) (G) of section 101 (a) of the Immigration and Nationality Act, or (b) has an occupational status which would, if he were seeking admission to

IMMIGRATION AND NATIONALITY ACT

the United States, entitle him to a nonimmigrant status under any of such paragraphs of section 101 (a) of the Immigration and Nationality Act, shall not be eligible to apply for adjustment of status without first executing and submitting with his application the written waiver required by section 247 (b) of the Immigration and Nationality Act and Part 247 of this chapter.

§ 481.3 *Admissibility into United States.* The determination of whether an alien is qualified under the Immigration and Nationality Act (66 Stat. 163; 8 U. S. C. 1101) except with respect to quota shall be predicated upon his admissibility into the United States under the Immigration and Nationality Act and this chapter, but he shall not be required to submit a passport or visa.

§ 481.4 *Medical examination.* The applicant shall be requested to submit to an examination by a medical officer of the United States Public Health Service, whose report setting forth the findings of the mental and physical condition of the applicant shall be incorporated into the record. Any applicant certified under paragraph (1), (2), (3), (4), or (5) of section 212 (a) of the Immigration and Nationality Act may appeal to a board of medical officers of the United States Public Health Service as provided in section 234 of the Immigration and Nationality Act and § 236.13 (c) of this chapter.

SUBPART B—PROCEDURAL AND OTHER NONSUBSTANTIVE PROVISIONS

§ 481.11 *Disposition of case—(a) Record and recommendation.* Upon completion of the examination, the immigration officer shall prepare a memorandum of his findings as to each of the essential facts prescribed by section 6 of the Refugee Relief Act of 1953, as amended, and § 481.12, together with his recommendation. The application record, supporting documents, and memorandum of the immigration officer shall be transmitted to the regional commissioner who shall approve or disapprove the recommendation of the immigration officer. Upon notification to the applicant or his attorney or representative that adjustment has been approved by concurrent resolution of Congress, the applicant shall be required to pay a visa fee of \$25.

(b) *Application denied; further action.* If the immigration officer recommends denial of the application, a copy of his memorandum shall be furnished to the applicant or his attorney or representative pursuant to §§ 292.11 and 292.12 of this chapter. The district director or officer in charge shall allow the applicant or his attorney or representative a reasonable time (not to exceed 10 days, except on a showing of good cause that more time is necessary) in which to file exceptions thereto and to submit a brief, if desired. If the regional commissioner approves the recommendation of the immigration officer,

SUPPLEMENT

a decision to that effect will be prepared and a copy of the regional commissioner's decision shall be served upon the applicant or his attorney or representative pursuant to § 292.12 of this chapter, and such further action shall be authorized to be taken as is necessary under existing law and regulations to effect the applicant's departure from the United States.

This order shall become effective on January 3, 1955. Compliance with the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C. 1003) as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the rules prescribed by the order, other than those that relate to interpretative rules, relate to matters of agency management or procedure.

PART 44

PART 44—DOCUMENTATION OF IMMIGRANTS UNDER SECTION 15 OF THE ACT OF SEPTEMBER 11, 1957.

Sec.

- 44.1 Definitions.
- 44.2 Classes of applicants under section 15 of the act of September 11, 1957.
- 44.3 Procedure in applying for visa.
- 44.4 Registration priority for issuance of visas.
- 44.5 Ineligibility to receive visas.
- 44.6 Procedure in issuing visas.

§ 44.1 *Definitions.* The following definitions, in addition to the pertinent definitions contained in section 15 of the act of September 11, 1957, section 101 of the Immigration and Nationality Act and Part 42 of this chapter, shall be applicable to this part:

(a) "Act" means the act of September 11, 1957 (Public Law 85-316, 71 Stat. 639).

(b) "Applicant" means an alien who seeks to enter the United States under the provisions of section 15 of the act of September 11, 1957.

(c) "Ethnic origin" as used in sections 2 (c) and 4 (a) (9) and (10) of the Refugee Relief Act of 1953, as amended, shall be determined on the basis of a combination of two or more of the following factors specified in subparagraphs (1) to (5), inclusive, of this paragraph, which combination shall include the factor specified in either subparagraph (1) or (2) of this paragraph:

(1) Applicant, other than a German expellee, emigrated from or is indigenous to the country of ethnic origin claimed;

(2) Antecedents emigrated from or were indigenous to the country of ethnic origin claimed;

IMMIGRATION AND NATIONALITY ACT

(3) Uses the language or dialect of the country of ethnic origin claimed as the common language of the home or for social communication;

(4) Resided in the country of birth, if other than the country of ethnic origin, in an area predominantly populated by persons of ethnic stock or origin claimed who, as distinguished from the surrounding population, retained the social characteristics and group homogeneity attributable to such persons;

(5) Evidences common attributes or social characteristics of the ethnic group to which he ascribes his origin and with which he resided in the country of his birth, if other than the country of ethnic origin, such as educational institutions attended, church affiliation, social and political associations and affiliations, name, business or commercial practices and associates and secondary language or dialect.

(d) "Firmly resettled" means the status of an alien, who at any time after the occurrence of events which form the basis of his claim to a refugee status, has been reestablished in a home under circumstances which indicate his intention and assure him a reasonable opportunity of remaining permanently. Nothing in this paragraph shall be construed as an exclusive definition of the term "firmly resettled" inasmuch as the facts and circumstances in the individual case must necessarily determine the question of firm resettlement.

(e) "Has fled or shall flee" as used in section 15 (c) (1) of the act of September 11, 1957, shall be deemed to include cases of forceful removal when the alien concerned declines to return to the area from which he was removed because of persecution or fear of persecution. The persecution or fear of persecution which caused the alien to flee from his usual place of abode need not be the same persecution which causes his inability to return.

(f) "Refugee" means any person in a country or area which is neither Communist nor Communist-dominated, who because of persecution, fear of persecution, natural calamity or military operations is out of his usual place of abode and unable to return thereto, who has not been firmly resettled and who is in urgent need of assistance for the essentials of life or for transportation.

§ 44.2 Classes of applicants under section 15, of the act of September 11, 1957—(a) German expellees. This class shall consist of refugees of German ethnic origin who (1) were born in and were forcibly removed from or forced to flee from Albania, Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Rumania, Union of Soviet Socialist Republics, Yugoslavia, or areas provisionally under the administration or control or domination of any such countries, except the Soviet Zone of military occupation

SUPPLEMENT

of Germany, and (2) are residing in the area of the German Federal Republic, western sectors of Berlin or in Austria at the time of application for a visa. Zone "B" of Trieste shall be considered an area provisionally under the administration of Yugoslavia. An immigrant visa issued to an alien within the class described in this paragraph shall be issued only in the German Federal Republic or in the western sector of Berlin or in Austria, and shall bear the symbol K-8 in the space provided for nonquota classification.

(b) *Netherlands refugees.* This class shall consist of refugees who: (1) Are of Dutch ethnic origin, and (2) resided on August 7, 1953, in continental Netherlands. An immigrant visa issued to an alien within the class described in this paragraph shall be issued only in continental Netherlands, and shall bear the symbol K-9 in the space provided for nonquota classification.

(c) *Netherlands relatives.* This class shall consist of persons who: (1) Are of Dutch ethnic origin, (2) resided on August 7, 1953, in continental Netherlands, and (3) qualify under any of the preferences specified in paragraph (2), (3), or (4) of section 203, (a) of the Immigration and Nationality Act. A prerequisite to qualification under any of such preferences shall be the approval by the Attorney General of a petition provided for in section 205 of the Immigration and Nationality Act. An immigrant visa issued to an alien within the class described in this paragraph shall be issued only in continental Netherlands, and shall bear the symbol K-9 in the space provided for nonquota classification.

(d) *Refugee-escapees.* This class shall consist of aliens who, because of persecution or fear of persecution on account of race, religion, or political opinion have fled or shall flee (1) from any Communist, Communist-dominated, or Communist-occupied area, or (2) from any country within the general area of the Middle East as defined in section 15 (c) (2) of the act, and who cannot return to such area, or to such country, on account of race, religion, or political opinion. An immigrant visa issued to an alien within the class described in this paragraph may be issued at any United States consular office which is authorized to issue immigrant visas, and shall bear the symbol K-10 in the space provided for nonquota classification.

(e) *Spouses and unmarried minor sons and daughters.* This class shall consist of the accompanying spouses and the accompanying unmarried sons or daughters under twenty-one years of age, including stepsons or stepdaughters and sons or daughters adopted prior to July 1, 1957, of persons described in paragraphs (a) to (d), inclusive, of this section: *Provided*, That a quota number is not available to such alien at the time of his application for a visa. A spouse, son,

IMMIGRATION AND NATIONALITY ACT

or daughter shall be deemed to be accompanying the principal applicant if such spouse, son, or daughter is issued an immigrant visa within four months of the date of issuance of an immigrant visa to the principal applicant. An immigrant visa issued to an alien within the class described in this paragraph shall be issued only in the country or area in which the principal applicant is, or could be, issued an immigrant visa under the act, and shall bear the same symbol which is or was used in issuing an immigrant visa to the principal applicant, in the space provided for nonquota classification. In any case where the principal applicant precedes his family to the United States, or in which the family unit is not traveling together, the name of the principal applicant shall be inserted in the immigrant visa issued to the spouse, son, or daughter.

§ 44.3 Procedure in applying for visa—(a) Applicants for refugee-escapee classification. In support of an application for refugee-escapee classification the alien shall submit a statement furnishing biographic data and describing the circumstances of his flight, escape, departure, or forceful removal from a Communist-dominated, or Communist-occupied area or from the general area of the Middle East, the hardship and persecution suffered, and a summary of his educational attainments, professional or technical abilities, and any manual skills or vocational experience which would tend to make such applicant of maximum value to the United States. This statement may be submitted by the applicant directly to the consular officer or in the applicant's behalf by a representative of the United States Escapee Program or any reputable welfare or refugee agency, and shall be supported by character references from interested persons bearing upon the applicant's attachment to the principles of constitutional democratic government.

(b) Form and place of application. Every applicant for an immigrant visa under section 15 of the act shall make application therefor on Form FS-256 in accordance with the provisions of section 222 of the Immigration and Nationality Act and § 42.30 of this chapter except as otherwise provided in § 44.2 (a), (b), and (c) with respect to the place of application.

§ 44.4 Registration priority for issuance of visas—(a) Registration priority of applicants other than refugee-escapees. Applicants desiring to qualify under the provisions of § 44.2 (a), (b), or (c) who were previously registered on quota waiting lists, including the beneficiaries of approved petitions, shall have the burden of coming forward to claim the benefits of the act. The names of such applicants who have not previously been registered on a quota waiting list, or in whose cases an approved petition for preference status has not been

SUPPLEMENT

received at the consular office, shall be entered on administrative waiting lists in the chronological order in which they apply for registration. Every applicant within the class described in § 44.2 (a), (b), or (c) shall be entitled to a registration priority as determined by (1) the date indicated by his registration on a quota waiting list for the purposes of the Immigration and Nationality Act, (2) the date on which a verified assurance of employment, housing, and against becoming a public charge was filed with the Department of State in his behalf under the Refugee Relief Act of 1953, as amended, (3) the date on which an approved petition was filed with the Attorney General in his behalf, or (4) the date he actually applied for registration under the act, whichever date is earliest.

(b) *Registration priority of refugee-escapees.* Applicants desiring to qualify as refugee-escapees under the provisions of § 44.2 (d) shall be accorded a registration priority as of the date of approval of their classification as a refugee-escapee by the Department.

§ 44.5 *Ineligibility to receive visas.* An applicant shall be considered ineligible to receive a special nonquota immigrant visa provided for in section 15 of the act on the following grounds:

- (a) He is not classifiable within any of the classes described in § 44.2 (a), (b), (c), (d), or (e);
- (b) He is ineligible to receive an immigrant visa under the applicable provisions of the Immigration and Nationality Act and the regulations contained in Part 42 of this chapter;
- (c) A quota number is available at the time of his visa application for the issuance of a quota immigrant visa to such applicant.

§ 44.6 *Procedure in issuing visas.* The issuance of special nonquota immigrant visas under section 15 of the act shall be in accordance with the provisions of section 221 of the Immigration and Nationality Act and § 42.41 of this chapter. An immigrant visa issued under the act shall bear a number assigned by the Department for use in issuing such visa, and shall also bear the petition number and approval date of the petition in the case of an applicant eligible under § 44.2 (c).

IMMIGRATION AND NATIONALITY ACT

PART 46

PART 46—CONTROL OF ALIENS DEPARTING FROM THE UNITED STATES

Sec.

- 46.1 Definitions.
- 46.2 Authority of departure-control officer to prevent alien's departure from the United States.
- 46.3 Aliens whose departure is deemed prejudicial to the interests of the United States.
- 46.4 Procedure in case of alien prevented from departing from the United States.
- 46.5 Hearing procedure before special inquiry officer.
- 46.6 Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.
- 46.7 Instructions from the Secretary of State required in certain cases.

§ 46.1 *Definitions.* For the purposes of this part:

- (a) The term "alien" means any person who is not a citizen or national of the United States.
- (b) The term "Commissioner" means the Commissioner of Immigration and Naturalization.
- (c) The term "regional commissioner" means an officer of the Immigration and Naturalization Service duly appointed or designated as a regional commissioner, or an officer who has been designated to act as a regional commissioner.
- (d) The term "district director" means an officer of the Immigration and Naturalization Service duly appointed or designated as a district director, or an officer who has been designated to act as a district director.
- (e) The term "United States" means the States, the District of Columbia, Alaska, the Canal Zone, Hawaii, Puerto Rico, the Virgin Islands, Guam, American Samoa, Swains Island, the Trust Territory of the Pacific Islands, and all other territory and waters, continental and insular, subject to the jurisdiction of the United States.
- (f) The term "continental United States" means the several States and the District of Columbia.
- (g) The term "geographical part of the United States" means (1) the continental United States, (2) Alaska, (3) Hawaii, (4) Puerto Rico, (5) the Virgin Islands, (6) Guam, (7) the Canal Zone, (8) American Samoa, (9) Swains Island, or (10) the Trust Territory of the Pacific Islands.
- (h) The term "depart from the United States" means depart by land, water, or air (1) from the United States for any foreign place, or (2) from one geographical part of the United States for a separate geographical part of the United States: *Provided*, That a trip or journey upon a public ferry, passenger vessel sailing coastwise on a

SUPPLEMENT

fixed schedule, excursion vessel, or aircraft, having both termini in the continental United States or in any one of the other geographical parts of the United States and not touching any territory or waters under the jurisdiction or control of a foreign power, shall not be deemed a departure from the United States.

(i) The term "departure-control officer" means any immigration officer as defined in 8 CFR 1.1 (a) (11), who is designated to supervise the departure of aliens, or any officer or employee of the United States designated by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of an outlying possession of the United States, to supervise the departure of aliens.

(j) The term "port of departure" means a port in the continental United States, Alaska, Guam, Hawaii, Puerto Rico or the Virgin Islands, designated as a port of entry by the Attorney General or by the Commissioner, or in exceptional circumstances such other place as the departure-control officer may, in his discretion, designate in an individual case, or a port in American Samoa, Swains Island, the Canal Zone, or the Trust Territory of the Pacific Islands, designated as a port of entry by the chief executive officer thereof.

(k) The term "special inquiry officer" shall have the meaning ascribed thereto in section 101 (b) (4) of the Immigration and Nationality Act.

§ 46.2 Authority of departure-control officer to prevent alien's departure from the United States. (a) No alien shall depart, or attempt to depart, from the United States if his departure would be prejudicial to the interests of the United States under the provisions of § 46.3. Any departure-control officer who knows or has reason to believe that the case of an alien in the United States comes within the provisions of § 46.3 shall temporarily prevent the departure of such alien from the United States and shall serve him with a written temporary order directing him not to depart, or attempt to depart, from the United States until notified of the revocation of the order.

(b) The written order temporarily preventing an alien, other than an enemy alien, from departing from the United States shall become final 15 days after the date of service thereof upon the alien, unless prior thereto the alien requests a hearing as hereinafter provided. At such time as the alien is served with an order temporarily preventing his departure from the United States, he shall be notified in writing concerning the provisions of this paragraph, and shall be advised of his right to request a hearing if entitled thereto under § 46.4. In the case of an enemy alien, the written order preventing departure shall become final on the date of its service upon the alien.

IMMIGRATION AND NATIONALITY ACT

(c) Any alien who seeks to depart from the United States may be required, in the discretion of the departure-control officer, to be examined under oath and to submit for official inspection all documents, articles, and other property in his possession which are being removed from the United States upon, or in connection with, the alien's departure. The departure-control officer shall temporarily prevent the departure of any alien who refuses to submit to such examination or inspection, and may, if necessary to the enforcement of this requirement, take possession of the alien's passport or other travel document.

§ 46.3 Aliens whose departure is deemed prejudicial to the interests of the United States. The departure from the United States of any alien within one or more of the following categories shall be deemed prejudicial to the interests of the United States:

(a) Any alien who is in possession of, and who is believed likely to disclose to unauthorized persons, information concerning the plans, preparations, equipment, or establishments for the national defense and security of the United States.

(b) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities of any kind designed to obstruct, impede, retard, delay or counteract the effectiveness of the national defense of the United States or the measures adopted by the United States or the United Nations for the defense of any other country.

(c) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities which would obstruct, impede, retard, delay, or counteract the effectiveness of any plans made or action taken by any country cooperating with the United States in measures adopted to promote the peace, defense, or safety of the United States or such other country.

(d) Any alien who seeks to depart from the United States for the purpose of organizing, directing, or participating in any rebellion, insurrection, or violent uprising in or against the United States or a country allied with the United States, or of waging war against the United States or its allies, or of destroying, or depriving the United States of sources of supplies or materials vital to the national defense of the United States, or to the effectiveness of the measures adopted by the United States for its defense, or for the defense of any other country allied with the United States.

(e) Any alien who is subject to registration for training and service in the Armed Forces of the United States and who fails to present a Registration Certificate (SSS Form No. 2) showing that he has com-

SUPPLEMENT

plied with his obligation to register under the Universal Military Training and Service Act, as amended.

(f) Any alien who is a fugitive from justice on account of an offense punishable in the United States.

(g) Any alien who is needed in the United States as a witness in, or as a party to, any criminal case under investigation or pending in a court in the United States: *Provided*, That any alien who is a witness in, or a party to, any criminal case pending in any criminal court proceeding may be permitted to depart from the United States with the consent of the appropriate prosecuting authority, unless such alien is otherwise prohibited from departing under the provisions of this part.

(h) Any alien who is needed in the United States in connection with any investigation or proceeding being, or soon to be, conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee, board, bureau, commission, or body in the United States, whether national, state, or local.

(i) Any alien whose technical or scientific training and knowledge might be utilized by an enemy or a potential enemy of the United States to undermine and defeat the military and defensive operations of the United States or of any nation cooperating with the United States in the interests of collective security.

(j) Any alien whose case does not fall within any of the categories described in paragraphs (a) to (i), inclusive, of this section, but which involves circumstances of a similar character rendering the alien's departure prejudicial to the interests of the United States.

§ 46.4 Procedure in case of alien prevented from departing from the United States. (a) Any alien, other than an enemy alien, whose departure has been temporarily prevented under the provisions of § 46.2 may, within 15 days of the service upon him of the written order temporarily preventing his departure, request a hearing before a special inquiry officer. The alien's request for a hearing shall be made in writing and shall be addressed to the district director having administrative jurisdiction over the alien's place of residence. If the alien's request for a hearing is timely made, the district director shall schedule a hearing before a special inquiry officer, and notice of such hearing shall be given to the alien on Form I-227. The notice of hearing shall, as specifically as security considerations permit, inform the alien of the nature of the case against him, shall fix the time and place of the hearing, and shall inform the alien of his right to be represented, at no expense to the Government, by counsel of his own choosing.

IMMIGRATION AND NATIONALITY ACT

(b) Every alien for whom a hearing has been scheduled under paragraph (a) of this section shall be entitled (1) to appear in person before the special inquiry officer, (2) to be represented by counsel of his own choice, (3) to have the opportunity to be heard and to present evidence, (4) to cross-examine the witnesses who appear at the hearing, except that if, in the course of the examination, it appears that further examination may divulge information of a confidential or security nature, the special inquiry officer may, in his discretion, preclude further examination of the witness with respect to such matters, (5) to examine any evidence in possession of the Government which is to be considered in the disposition of the case, provided that such evidence is not of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, (6) to have the time and opportunity to produce evidence and witnesses on his own behalf, and (7) to reasonable continuances, upon request, for good cause shown.

(c) Any special inquiry officer who is assigned to conduct the hearing provided for in this section shall have the authority to: (1) administer oaths and affirmations, (2) present and receive evidence, (3) interrogate, examine, and cross-examine under oath or affirmation both the alien and witnesses, (4) rule upon all objections to the introduction of evidence or motions made during the course of the hearing, (5) take or cause depositions to be taken, (6) issue subpoenas, and (7) take any further action consistent with applicable provisions of law, Executive orders, proclamations, and regulations.

§ 46.5 *Hearing procedure before special inquiry officer.* (a) The hearing before the special inquiry officer shall be conducted in accordance with the following procedure:

(1) The special inquiry officer shall advise the alien of the rights and privileges accorded him under the provisions of § 46.4.

(2) The special inquiry officer shall enter of record (i) a copy of the order served upon the alien temporarily preventing his departure from the United States, and (ii) a copy of the notice of hearing furnished the alien on Form I-227.

(3) The alien shall be interrogated by the special inquiry officer as to the matters considered pertinent to the proceeding, with opportunity reserved to the alien to testify thereafter in his own behalf, if he so chooses.

(4) The special inquiry officer shall present on behalf of the Government such evidence, including the testimony of witnesses and the certificates or written statements of Government officials or other persons, as may be necessary and available. In the event such certifi-

SUPPLEMENT

cates or statements are received in evidence, the alien may request and, in the discretion of the special inquiry officer, be given an opportunity to interrogate such officials or persons, by deposition or otherwise, at a time and place and in a manner fixed by the special inquiry officer: *Provided*, That when in the judgment of the special inquiry officer any evidence relative to the disposition of the case is of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, such evidence shall not be presented at the hearing but shall be taken into consideration in arriving at a decision in the case.

(5) The alien may present such additional evidence, including the testimony of witnesses, as is pertinent and available.

(b) A complete verbatim transcript of the hearing, except statements made off the record, shall be recorded. The alien shall be entitled, upon request, to the loan of a copy of the transcript, without cost, subject to reasonable conditions governing its use.

(c) Following the completion of the hearing, the special inquiry officer shall make and render a recommended decision in the case, which shall be governed by and based upon the evidence presented at the hearing and any evidence of a confidential or security nature which the Government may have in its possession. The decision of the special inquiry officer shall recommend (1) that the temporary order preventing the departure of the alien from the United States be made final, or (2) that the temporary order preventing the departure of the alien from the United States be revoked. This recommended decision of the special inquiry officer shall be made in writing and shall set forth the officer's reasons for such decision. The alien concerned shall at his request be furnished a copy of the recommended decision of the special inquiry officer, and shall be allowed a reasonable time, not to exceed 10 days, in which to submit representations with respect thereto in writing.

(d) As soon as practicable after the completion of the hearing and the rendering of a decision by the special inquiry officer, the district director shall forward the entire record of the case, including the recommended decision of the special inquiry officer and any written representations submitted by the alien, to the regional commissioner having jurisdiction over his district. After reviewing the record, the regional commissioner shall render a decision in the case, which shall be based upon the evidence in the record and on any evidence or information of a confidential or security nature which he deems pertinent. Whenever any decision is based in whole or in part on confidential or security information not included in the record, the decision shall state that such information was considered. A copy of

IMMIGRATION AND NATIONALITY ACT

the regional commissioner's decision shall be furnished the alien, or his attorney or representative. No administrative appeal shall lie from the regional commissioner's decision.

(e) Notwithstanding any other provision of this part, the Secretary of State, after consultation with the Attorney General, may at any time permit the departure of an individual alien or of a group of aliens from the United States if he determines that such action would be in the national interest. If the Secretary of State specifically requests the Attorney General to prevent the departure of a particular alien or of a group of aliens, the Attorney General shall not permit the departure of such alien or aliens until he has consulted with the Secretary of State.

(f) In any case arising under §§ 46.1 to 46.7, the Secretary of State shall, at his request, be kept advised, in as much detail as he may indicate is necessary, of the facts and of any actions taken or proposed.

§ 46.6 Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States. (a) In addition to the restrictions and prohibitions imposed by the provisions of this part upon the departure of aliens from the United States, any alien who seeks to depart from the Canal Zone, the Trust Territory of the Pacific Islands, or an outlying possession of the United States shall comply with such other restrictions and prohibitions as may be imposed by regulations prescribed, with the concurrence of the Secretary of State and the Attorney General, by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or by the governor of an outlying possession of the United States, respectively. No alien shall be prevented from departing from such zone, territory, or possession without first being accorded a hearing as provided in §§ 46.4 and 46.5.

(b) The Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of any outlying possession of the United States shall have the authority to designate any employee or class of employees of the United States as hearing officers for the purpose of conducting the hearing referred to in paragraph (a) of this section. The hearing officer so designated shall exercise the same powers, duties, and functions as are conferred upon special inquiry officers under the provisions of this part. The chief executive officer of such zone, territory, or possession shall, in lieu of the regional commissioner, review the recommended decision of the hearing officer, and shall render a decision in any case referred to him, basing it on evidence in the record and on any evidence or

SUPPLEMENT

information of a confidential or a security nature which he deems pertinent.

§ 46.7 Instructions from the Secretary of State required in certain cases. In the absence of appropriate instructions from the Secretary of State, departure-control officers shall not exercise the authority conferred by § 46.2 in the case of any alien who seeks to depart from the United States in the status of a nonimmigrant under section 101 (a) (15) (A) or (G) of the Immigration and Nationality Act, or in the status of a nonimmigrant under section 11 (3), 11 (4), or 11 (5) of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (61 Stat. 756): *Provided*, That in cases of extreme urgency, where the national security so requires, a departure-control officer may preliminarily exercise the authority conferred by § 46.2 pending the outcome of consultation with the Secretary of State, which shall be undertaken immediately. In all cases arising under this section, the decision of the Secretary of State shall be controlling: *Provided*, That any decision to prevent the departure of an alien shall be based upon a hearing and record as prescribed in this part.

PART 50

SUBCHAPTER F—NATIONALITY AND PASSPORTS

PART 50—NATIONALITY PROCEDURES UNDER THE IMMIGRATION AND NATIONALITY ACT

FORMAL RENUNCIATION OF NATIONALITY

Sec.

50.1 Renunciation procedure.
50.2 Execution and disposition of oath of renunciation.

OATH OF ALLEGIANCE TAKEN BY DUAL NATIONAL TO AVOID DIVESTITURE OF UNITED STATES NATIONALITY

50.6 Dual nationals voluntarily seeking or claiming benefits of foreign nationality.
50.7 Procedure for taking oath.
50.8 Effect of taking oath.

ASSERTION BY MINOR OF CLAIM TO UNITED STATES NATIONALITY

50.9 Procedure for asserting claim.
50.10 Execution and disposition of form.

CRITERIA FOR DETERMINING WHETHER NATURALIZED NATIONAL COMES WITHIN SCOPE OF SECTION 354 (2)

50.11 Carrying on a commercial enterprise.
50.12 Carrying on scientific research.
50.13 Work or activities under unique or unusual circumstances.

IMMIGRATION AND NATIONALITY ACT

CERTIFICATION OF LOSS OF UNITED STATES NATIONALITY

Sec.

- 50.14 Certification by diplomatic or consular officer.
- 50.15 Cases in which a certificate should be prepared.
- 50.16 Affidavit of expatriated person.
- 50.17 Reference in certificate to other documents.
- 50.18 Amplification of certificate.
- 50.19 Execution and distribution of certificate.

ISSUANCE OF CERTIFICATE OF NATIONALITY

- 50.20 Application for certificate.
- 50.21 Evidence of nationality required.
- 50.22 Issuance of certificate.
- 50.23 Transmission of certificate to foreign state.

CERTIFICATE OF IDENTITY FOR TRAVEL TO THE UNITED STATES TO APPLY FOR ADMISSION

- 50.24 Contents of application.
- 50.25 Affidavit of supporting witness.
- 50.26 Supporting evidence.
- 50.27 Form and execution of application.
- 50.28 Independent investigation.
- 50.29 New or additional evidence.
- 50.30 Meaning of good faith.
- 50.31 Meaning of substantial basis.
- 50.32 Denial of a right or privilege as a national of the United States.
- 50.33 In case of doubt as to issuance of certificate of identity.
- 50.34 Sixty days' notice prior to issuance of certificate of identity.
- 50.35 Form and execution of certificate of identity.
- 50.36 Period of validity of certificate of identity.
- 50.37 Denial of certificate of identity.
- 50.38 Appeal by applicant.
- 50.39 Direct appeal to the Secretary of State by attorney in the United States.
- 50.40 Certificate of identity obtained by fraud or other illegality.

CERTIFICATE OF IDENTITY FOR ADMISSION TO THE UNITED STATES TO PROSECUTE AN ACTION UNDER SECTION 503 OF THE NATIONALITY ACT OF 1940

- 50.45 Issuance of certificate of identity under the Nationality Act of 1940.
- 50.46 Application for certificate of identity.
- 50.47 Independent investigation.
- 50.48 Good faith and substantial basis of claim of United States nationality.
- 50.49 Denial of a right or privilege as a national of the United States.
- 50.50 Proof of institution of action.
- 50.51 In case of doubt as to issuance of certificate of identity.
- 50.52 Form and issuance of certificate of identity.
- 50.53 Period of validity of certificate of identity.
- 50.54 Denial of certificate of identity.
- 50.55 Appeal by applicant.
- 50.56 Certificate of identity obtained by fraud or other illegality.
- 50.57 Repeal of section 503, and savings clause.

FORMAL RENUNCIATION OF NATIONALITY

§ 50.1 *Renunciation procedure.* Persons desiring to renounce their United States nationality under section 349 (a) (6) of the Immigration and Nationality Act (66 Stat. 268) may do so by

SUPPLEMENT

appearing before a diplomatic or consular officer of the United States and taking an oath of renunciation of nationality of the United States in the form prescribed by the Secretary of State.

§ 50.2 *Execution and disposition of oath of renunciation.* The form shall be executed in quadruplicate. The original and one copy shall be sent to the Department, and two copies retained in the files of the office in which it was executed. After the Department of State has approved the form, it will so advise the appropriate officer of the Foreign Service, who will thereafter make a notation on the two copies retained by him that the form has been approved by the Department and showing the day of approval. A copy of such form may be furnished to the person to whom it relates upon request therefor. When submitting the form of renunciation of American nationality, it must be accompanied by the certificate of loss of American Nationality. The approval of the certificate of loss of nationality will be by rubber stamp thereon which may also be taken to cover approval of the form of renunciation of nationality.

OATH OF ALLEGIANCE TAKEN BY DUAL NATIONAL TO AVOID DIVESTITURE OF UNITED STATES NATIONALITY

§ 50.6 *Dual nationals voluntarily seeking or claiming benefits of foreign nationality.* A person who acquired at birth the nationality of the United States and of a foreign state and who has voluntarily sought or claimed benefits of the nationality of any foreign state, as, for example, by applying for a foreign passport or identity card, or by applying for registration as a national of a foreign country, or by any other similar act, regardless of whether he is a national of such state, shall be deemed to be within the scope of section 350 (1) of the Immigration and Nationality Act (66 Stat. 269). The section is not considered applicable to a person who has sought or claimed benefits of the nationality of any foreign state in a manner which has caused loss of American nationality.

§ 50.7 *Procedure for taking oath.* A person who desires to take an oath of allegiance to the United States before a United States diplomatic or consular officer for the purpose of avoiding the loss of American nationality under section 350 (1) of the Immigration and Nationality Act (66 Stat. 269) shall execute an application for a passport or registration as an American citizen, which application shall contain an oath of allegiance in the form prescribed by the Secretary of State.

§ 50.8 *Effect of taking oath.* The oath of allegiance, when taken before a United States diplomatic or consular officer, shall be deemed

IMMIGRATION AND NATIONALITY ACT

sufficient to fulfill the requirement of section 350 (1) of the Immigration and Nationality Act (66 Stat. 269): *Provided*, That the person has passed the age of 22 years and has not thereafter resided continuously for three years in the foreign state of which he is a national by birth: *And provided also*, That the oath shall not be required of such a person if his foreign residence begins after he has attained the age of 60 years and he shall have had his residence in the United States for 25 years after having attained the age of 18 years.

ASSERTION BY MINOR OF CLAIM TO UNITED STATES NATIONALITY

§ 50.9 *Procedure for asserting claim.* A national of the United States, who, while under eighteen years of age, has expatriated himself under the provisions of section 349 (a) (2), (4), (5), or (6) of the Immigration and Nationality Act (66 Stat. 267-268) may assert his claim to United States nationality under section 351 (b) of the Immigration and Nationality Act (66 Stat. 269) within six months after attaining the age of 18 years on the form prescribed for this purpose by the Secretary of State.

§ 50.10 *Execution and disposition of form.* The form for asserting the claim to the nationality of the United States shall be executed in triplicate. The original shall be forwarded to the Department of State, a copy shall be retained in the office in which it was executed, and a copy shall be furnished to the person asserting the claim.

CRITERIA FOR DETERMINING WHETHER NATURALIZED NATIONAL COMES WITHIN SCOPE OF SECTION 354 (2)

§ 50.11 *Carrying on a commercial enterprise.* Under section 354 (2) (A) of the Immigration and Nationality Act (66 Stat. 271), a naturalized American national residing abroad temporarily for the purpose of engaging in a commercial enterprise which substantially and directly benefits American trade or commerce shall not lose his nationality by having a continuous residence for five years in any foreign state or states covered by section 352 (a) (2) of the Immigration and Nationality Act (66 Stat. 269). It must appear that the national has no substantial or controlling reason for residing abroad other than to engage in the commercial enterprise and that his foreign residence is temporary. Further, the character of the commercial enterprise must be such that its effect is to increase directly and substantially production, sales, inventory, or profits, or to facilitate the acquisition of raw materials, distribution of products or the extension of services of or for an American financial, commercial, or business organization having its principal place of business in the United States.

SUPPLEMENT

§ 50.12 *Carrying on scientific research.* (a) Under section 354 (2) (B) of the Immigration and Nationality Act (66 Stat. 271), a naturalized American national, who is temporarily residing abroad for the purpose of carrying on scientific research on behalf of a bona fide educational, research, experimental, or other institution, which institution shall be specifically accredited by the Secretary of State, and the purpose of which research is to discover, develop, or test scientific knowledge, principles, theory, apparatus, etc., for practical uses or applications which would directly and substantially benefit the interests of the United States, shall not be deemed to have lost his American nationality by having a continuous residence for five years in any foreign state or states covered by section 352 (a) (2) of the Immigration and Nationality Act (66 Stat. 269).

(b) The term "an institution accredited by the Secretary of State" means an institution which has established by evidence satisfactory to the Secretary of State that it is engaged in research which is directly and substantially beneficial to the United States. The evidence to show that the institution in which the naturalized American citizen is employed is such an organization, may be submitted when the naturalized citizen first applies for further passport facilities or for registration as an American citizen. Initially, there shall be submitted an affidavit by two principal officers of the institution setting forth complete information concerning the institution and its activities. In the affidavit, the name of the institution, the location of its principal office and place, or places, of business and the type of organization, i. e., whether it is a sole proprietorship, partnership, or corporation, should be stated; the owners and officers should be fully identified and their nationalities stated; the names, locations, and activities of organizations and firms of which the institution is a branch, subsidiary, or affiliate, or in which there is a community of ownership, should be stated. The Secretary of State may require such additional evidence as may be deemed necessary for a determination as to whether the institution shall be accredited.

(c) After an institution has been once accredited by the Secretary of State, it will be necessary only to submit evidence to show that its character and operations have not changed in the interim from the date of such accrediting and the time at which a person may subsequently seek to claim the benefits of section 354 (2) (B) of the Immigration and Nationality Act (66 Stat. 271).

(d) Where more than one person is engaged simultaneously in essentially similar scientific research for the same institution, it will be necessary to submit the required evidence concerning the character and operations of the institution only in the case of one person.

IMMIGRATION AND NATIONALITY ACT

However, evidence must be submitted in each individual case to show that the person concerned is doing scientific research of the type specified in this paragraph for the accredited institution.

(e) Each case and each organization must be considered on its merits, and, on the basis thereof as submitted, officers of the Foreign Service will be advised from time to time by the Department of State of the names of the scientific research institutions which have been accredited.

§ 50.13 Work or activities under unique or unusual circumstances.
(a) Under section 354 (2) (C) of the Immigration and Nationality Act (66 Stat. 271), a naturalized American citizen residing abroad temporarily, who under unique or unusual circumstances engages in work or activities which directly and substantially benefit the interests of the United States, shall not be deemed to have lost his nationality under section 352 (a) (2) of the Immigration and Nationality Act (66 Stat. 269).

(b) Section 354 (2) (C) would apply to a person who, with or without compensation, motivated by devotion to the United States and with intention to benefit the United States engages in work or activities of a continuing nature which enhance in a direct and substantial way the material or cultural wealth, prestige or security of the United States.

(c) It may apply to a person who apparently is abroad for a reason or purpose which ordinarily would not be of direct or substantial benefit to the United States, but who by reason of his employment, position, standing, prestige, influence or associations, is able to contribute in a direct and substantial way to the wealth, prestige or security of the United States.

(d) Each case of this character must be submitted to the Department of State and will be considered on its own merits.

CERTIFICATION OF LOSS OF UNITED STATES NATIONALITY

§ 50.14 Certification by diplomatic or consular officer. Whenever a diplomatic or consular officer of the United States has reason to believe that a person, while in a foreign country, has lost his American nationality under any provision of Chapter 3 of Title III of the Immigration and Nationality Act (66 Stat. 267), or under any provision of Chapter IV of the Nationality Act of 1940 (54 Stat. 1168), as amended, he shall certify the facts upon which such belief is based to the Department of State in writing.

§ 50.15 Cases in which a certificate should be prepared. The certificate should be prepared in the case of any person coming within

SUPPLEMENT

the scope of any of the provisions of Chapter IV of the Nationality Act of 1940. The certificate should also be prepared in the case of any person coming within the scope of the provisions of Chapter 3, Title III of the Immigration and Nationality Act, except that, in the case of a national who has performed any of the acts specified in paragraphs (2), (4), (5), and (6) of section 349 (a), Chapter 3, Title III of the Immigration and Nationality Act, such certificate shall not be prepared and submitted until after he shall have attained the age of 18 years and 6 months and shall have failed to assert his claim to United States nationality in the manner prescribed by the Secretary of State, within 6 months after attaining the age of 18 years.

§ 50.16 *Affidavit of expatriated person.* When obtainable, an affidavit executed in quadruplicate by the expatriated person shall be attached to each copy of the certificate of the officer. This affidavit shall contain in substance:

- (a) That the affiant has voluntarily expatriated himself by the performance of one of the acts or the fulfillment of the conditions specified in Chapter 3, Title III of the Immigration and Nationality Act (66 Stat. 267), or Chapter IV of the Nationality Act of 1940 (54 Stat. 1168);
- (b) That his permanent residence in the United States, if he ever had one, has been voluntarily abandoned and that the expatriated person neither intends nor desires to resume residence in the United States in the immediate or near future;
- (c) If naturalized in the United States, that the naturalization certificate is or has been surrendered voluntarily because of his expatriation; and
- (d) That the affiant neither intends nor desires to preserve his allegiance to the United States but intends and desires to preserve his new allegiance, if one has been acquired.

§ 50.17 *Reference in certificate to other documents.* (a) When documents, communications, or excerpts therefrom, from competent offices or officials of foreign governments, and statements or affidavits by the persons concerned are referred to in that portion of the certificate having reference to the nature of the evidence adduced which is believed to have caused expatriation, verified copies of the documents, communications, statements, affidavits, or excerpts therefrom, shall be attached to and made a part of the certificate.

(b) When reference is made to passports or applications for passports, registration, repatriation, and similar documents, or to affidavits forming a part of an application, or to departmental communications,

IMMIGRATION AND NATIONALITY ACT

copies thereof shall not be attached to and made a part of the certificate unless specifically authorized by the Department of State, but the pertinent statement or statements shall be quoted in the certificate. The quotation shall be limited to the admission of the act of expatriation and no extraneous or explanatory matter should be included.

§ 50.18 *Amplification of certificate.* When preparing a certificate of expatriation, the certificate shall be amplified in appropriate cases by adding a paragraph thereto setting forth the names, places and dates of birth, and present addresses of the spouse and children, if any, of the individual concerned and whether any such person is considered to have acquired foreign nationality. The certificate, however, is not to be regarded as a certificate of expatriation of the spouse or children of any person in whose case a certificate is prepared.

§ 50.19 *Execution and distribution of certificate.* The certificate shall be executed in quadruplicate. The original and two copies shall be sent to the Department and the fourth copy retained in the files of the office in which it was executed. After the Department of State has approved the certificate, one copy shall then be returned to the appropriate diplomatic or consular officer, who shall thereafter make a notation on the fourth retained by him to the effect that the certificate has been approved by the Department under the date which appears on the approved copy returned to him by the Department. He shall thereafter forward the fourth copy of such certificate to the person to whom it relates.

ISSUANCE OF CERTIFICATE OF NATIONALITY

§ 50.20 *Application for certificate.* (a) Any person who acquired the nationality of the United States at birth and who is involved in any manner in judicial or administrative proceedings in a foreign state in connection with which the establishment of his nationality in the United States is pertinent, may apply for a certificate of American nationality in the form prescribed by the Secretary of State. (Sec. 359, 66 Stat. 273.)

(b) In the United States, including Alaska and Hawaii, the application must be executed before a clerk of a Federal or State court authorized by section 310 (a) of the Immigration and Nationality Act (66 Stat. 239) to naturalize aliens within the jurisdiction in which the applicant resides, or before an agent of the Department of State. In an insular possession of the United States the application must be executed before a person in the office of the Chief Executive who has authority to administer oaths. In a foreign country the application must be executed before a diplomatic or consular officer

SUPPLEMENT

of the United States. When an application is executed before a diplomatic or consular officer it shall be in duplicate.

(c) There shall be submitted with the application documentary evidence establishing that the applicant is involved in judicial or administrative proceedings pending in a foreign country in connection with which the establishment of his nationality of the United States is pertinent. There shall be affixed to each application, including the duplicate application when required, a photograph of the applicant not more than 3 by 3 inches and not less than 2½ by 2½ inches in size, unmounted, printed on thin paper showing the full front view of the features of the applicant, and taken within six months of the date when submitted. A separate photograph, which must be identical to that affixed to the application, shall be submitted, in order that it may be affixed to the certificate of nationality if and when issued. The original copy of the application shall in all cases be submitted to the Department of State.

§ 50.21 *Evidence of nationality required.* Each application for a certificate of nationality must be accompanied by evidence of nationality of the character which is required by the Rules Governing the Granting and Issuing of Passports in the United States issued by the President on March 31, 1938, or any rules which may subsequently be issued by him (see §§ 51.51 to 51.73 of this chapter). If the applicant has previously submitted satisfactory evidence of American citizenship in connection with an application for a passport or registration, it will not be necessary for him to duplicate such evidence. It will, however, be necessary for the applicant to satisfy the Secretary of State that he has not expatriated himself under the Immigration and Nationality Act or any prior act.

§ 50.22 *Issuance of certificate.* Upon the approval of the application a certificate of nationality for use in a judicial or administrative proceeding in a foreign state shall be issued.

§ 50.23 *Transmission of certificate to foreign state.* When a certificate of nationality is issued, it shall be transmitted through official channels to the judicial or administrative officer of the foreign state in which it is to be used.

CERTIFICATE OF IDENTITY FOR TRAVEL TO THE UNITED STATES TO APPLY FOR ADMISSION

§ 50.24 *Contents of application.* The application for a certificate of identity shall show:

- (a) The full and true name of the applicant;
- (b) The period(s) and place(s) of his residence outside the United States;

IMMIGRATION AND NATIONALITY ACT

- (c) That he has been physically present in the United States or that he is under sixteen years of age and was born abroad of a citizen parent;
- (d) That he claims to be a national of the United States, and the basis of such claim and evidence submitted in support thereof;
- (e) That such claim is made in good faith and upon a substantial basis;
- (f) That he claims a right or privilege as a national of the United States, and specifically the nature of such claim;
- (g) That such right or privilege has been denied him by a specified department or agency or official of the United States on the ground that the applicant is not a national of the United States, and the date and place of such denial;
- (h) That he desires to proceed to a port of entry in the United States and there to apply for admission;
- (i) That he understands that he may apply for admission into the United States at any port of entry and that he shall be subject to all the provisions of the Immigration and Nationality Act relating to the conduct of proceedings involving aliens seeking admission into the United States;
- (j) Such other facts and proofs, with respect to the foregoing, as may be required by the application form or by the diplomatic or consular officer before whom the application for a certificate of identity is executed.

§ 50.25 *Affidavit of supporting witness.* The application for a certificate of identity shall be supported by the affidavit of a credible witness, but this requirement may be waived in the discretion of the diplomatic or consular officer before whom the application is executed.

§ 50.26 *Supporting evidence.* (a) The application for a certificate of identity shall be supported by evidence of the official decision of the specified department, independent agency, or official thereof denying the applicant a right or privilege upon the ground that he is not a national of the United States and evidence that he has exhausted his administrative remedies with such department, agency, or official.

(b) The applicant shall submit with his application for a certificate of identity a statement setting forth in detail the reasons why he considers the final decision of the department, independent agency, or official thereof to be erroneous.

(c) The applicant shall submit a statement that he fully and truthfully disclosed all pertinent facts to the department, independent

SUPPLEMENT

agency, or official thereof and that he had no additional evidence to submit at that time. The diplomatic or consular officer may require such other evidence of identity and citizenship as may appear to him to be available.

§ 50.27 *Form and execution of application.* (a) The application for a certificate of identity shall be made in quadruplicate on Form FS-343 (revised) and shall be signed and sworn to (or affirmed) by the applicant in person before a diplomatic or consular officer of the United States.

(b) The affidavit of the witness, if not waived, shall also be made before a diplomatic or consular officer of the United States.

(c) The application shall be accompanied by nine identical photographs of the applicant taken within thirty days of the date on which the application is filed. The photographs shall be two by two inches in size, unmounted, printed on thin paper, have a light background, and clearly show a full front view of the features of the applicant (with head bare, unless the applicant is a member of a religious order wearing a headdress), with the distance from the top of head to point of chin approximately one and one fourth inches. Snapshot, group, or full-length pictures will not be accepted.

(d) The applicant, except in the case of a person physically or otherwise incapable of signing his name, shall sign each copy of the photograph with his full, true name in such manner as not to obscure the features. The signature shall be by mark if the applicant is unable to write.

(e) One photograph shall be glued to the original application and one to each copy thereof and impressed with the legend machine so as not to cover the features.

(f) The remaining five photographs shall be affixed in like manner to the certificate of identity and copies thereof in the event that document is issued to the applicant.

(g) Officers not having a legend machine will use the impression seal. The consular impression seal should invariably be used in completing the application.

(h) Fingerprints of the applicant shall be required and attached to the application and each copy thereof.

§ 50.28 *Independent investigation.* When an application for a certificate of identity is executed before a diplomatic or consular officer, an independent investigation of the facts in the case should be made, as far as practicable, by such officer, even though the application and proof submitted therewith may, on their face, appear to justify the issuance of a certificate of identity. Such investigation

IMMIGRATION AND NATIONALITY ACT

should include an investigation of all the facts and circumstances which would result in loss of American nationality.

§ 50.29 *New or additional evidence.* At any time during the processing of an application for a certificate of identity, when new or additional evidence which casts doubt on the validity of the original decision that the applicant was not a citizen of the United States comes to the attention of a diplomatic or consular officer, he shall forward the evidence, together with his comments regarding its credibility, to the Department of State. Pending the receipt of the Department's decision in the matter, the diplomatic or consular officer shall take no further action on the application for the certificate of identity.

§ 50.30 *Meaning of good faith.* Good faith means an honest belief of the applicant that he is a national of the United States, and is to be determined by the diplomatic or consular officer of the United States in the light of the facts and circumstances of each case. For example, where it appears that United States nationality has been lost by naturalization of the person upon his own application in a foreign state, good faith would appear to be lacking in the absence of a satisfactory showing to the contrary. Good faith may be considered as lacking when false statements have been made or false documentary evidence has been submitted to the Department, independent agency, or official thereof. Also, special care should be taken in the examination of the case of an applicant who, while in a foreign state, has exercised any rights or performed any duties for which only nationals of such state are eligible, or where the facts of the case indicate that he may have expatriated himself in some manner. Good faith will not be considered as established unless the applicant is able to present evidence to show that he is in fact the individual he claims to be.

§ 50.31 *Meaning of substantial basis.* A substantial basis of a claim of United States nationality means one which satisfies the diplomatic or consular officer of the United States that the claim of the applicant that he is a national of the United States is, notwithstanding any previous ruling of a department, agency, or executive official of the United States, sufficiently meritorious to justify a determination of the question by the Attorney General in connection with an application for admission into the United States. A substantial basis may not be deemed to exist where a court of the United States has held that the person concerned is not an American national.

§ 50.32 *Denial of a right or privilege as a national of the United States.* Denial by a department or agency or official of the United States of a right or privilege as a national of the United States may occur in the administration of various laws. It should appear that

SUPPLEMENT

the right or privilege denied was one to which the person would otherwise have been entitled but for the fact that he was deemed not to have been a national of the United States. For example, such denial may occur where a person has applied as a national of the United States for a passport or for registration at an American consulate or for nonquota status of an alien wife or minor child, and the application is denied on the ground that the applicant is not a national of the United States. The denial of a right or privilege on the ground that the person has not established his identity is not a denial of any right or privilege as a national of the United States within the meaning of section 360 (b) of the Immigration and Nationality Act (66 Stat. 273).

§ 50.33 In case of doubt as to issuance of certificate of identity. Where it appears that the presence of the applicant in the United States would endanger the public safety or where the diplomatic or consular officer believes that the applicant is a national of the United States and entitled to a passport as such or where the diplomatic or consular officer has any doubt with respect to the action he should take upon the application for a certificate of identity, the officer should suspend action and consult the Department of State.

§ 50.34 Sixty days' notice prior to issuance of certificate of identity. If the diplomatic or consular officer decides that the issue of a certificate of identity is warranted, he shall give the Department of State by cable sixty days' notice of his intention to issue a certificate of identity and of the travel plans and port of arrival of the applicant. At the same time, he shall forward to the Department by mail three copies of the application for a certificate of identity, a report in triplicate of the result of the independent investigation conducted by him, and the original documentary evidence which was submitted in support of the application. Upon the receipt of the copies of the application and evidence, the Department of State will forward to the District Director of the Immigration and Naturalization Service for the port of arrival full details concerning the case.

§ 50.35 Form and execution of certificate of identity. The certificate of identity shall be prepared in quintuplicate on Form FS-343a. It shall be signed and sealed by the diplomatic or consular officer, who shall state on the original and each copy thereof the date and place of issuance. The original shall be delivered to the applicant. The four copies shall be marked "copy." One copy shall be retained in the files of the issuing office, one copy shall be sent to the District Director of the Immigration and Naturalization Service for the port of arrival, and two copies shall be sent to the Department of State.

IMMIGRATION AND NATIONALITY ACT

§ 50.36 *Period of validity of certificate of identity.* A certificate of identity shall be issued only after the applicant has completed his travel plans. The certificate shall expire two months from the date of its issuance and shall be extended only upon the recommendation of the Immigration and Naturalization Service.

§ 50.37 *Denial of certificate of identity.* In case the certificate of identity is denied by a diplomatic or consular officer, a notation to that effect shall be made by him in the space provided therefor at the end of the original application and on each copy thereof. The notation shall set forth definitely the factual and/or legal grounds for the denial. The original application shall be retained in the files of the office to which the application was submitted, one copy shall be returned to the applicant, and two copies shall be sent to the Department of State together with all original documentary evidence submitted by the applicant.

§ 50.38 *Appeal by applicant.* (a) When an applicant is denied a certificate of identity, he may appeal by a written statement to the Secretary of State, setting forth fully the pertinent facts and the grounds upon which United States nationality is claimed and his reasons for considering that the denial of his application by the diplomatic or consular officer is not justified.

(b) The statement shall be executed in quadruplicate and submitted to the diplomatic or consular office in which the denial was made. If the statement contains facts not set forth in the application, it shall be sworn to (or affirmed) by the applicant before a diplomatic or consular officer of the United States and an investigation shall be made by the diplomatic or consular officer of the new or additional facts alleged. A report of this investigation shall accompany the applicant's statement to the Department of State. The original statement and one copy shall be forwarded by the diplomatic or consular officer to the Department of State. One copy of the statement shall be retained in the files of the diplomatic or consular office in which the denial was made and a copy returned to the applicant.

(c) If it is not practicable for the statement to be sworn to or affirmed by the applicant in the diplomatic or consular office in which the denial was made, it may be sworn to or affirmed in any other diplomatic or consular office of the United States. In such case, the original and two copies of the statement shall be forwarded by that office to the diplomatic or consular office in which the application was denied, but, if that is not practicable, they shall be sent directly to the Department of State. One copy shall be returned to the applicant by the taking office. The office in which the application was denied

SUPPLEMENT

shall retain one copy and forward the original and the other copy to the Department of State.

§ 50.39 Direct appeal to the Secretary of State by attorney in the United States. When a certificate of identity has been refused by a diplomatic or consular officer abroad, the applicant may appeal directly to the Secretary of State through his attorney in the United States. The appeal shall be directed to the Passport Office of the Department of State. No special form is prescribed for such appeal. The evidence to be furnished in the appeal through the attorney, in the United States shall be as prescribed in § 50.38 of this part. The Passport Office will process the appeal in due course in accordance with the facts in each individual case.

§ 50.40 Certificate of identity obtained by fraud or other illegality. Whenever a certificate of identity is found by a diplomatic or consular officer of the United States to have been obtained by fraud or other illegality, or to be in the possession of a person other than the rightful holder, such officer shall, if practicable, obtain possession of the certificate and send it, together with a report on the matter, directly to the Department of State.

CERTIFICATE OF IDENTITY FOR ADMISSION TO THE UNITED STATES TO PROSECUTE AN ACTION UNDER SECTION 503 OF THE NATIONALITY ACT OF 1940

§ 50.45 Issuance of certificate of identity under the Nationality Act of 1940. Section 503 of the Nationality Act of 1940 (54 Stat. 1171, 1172; 8 U. S. C. 903) provided:

If any person who claims a right or privilege as a national of the United States is denied such right or privilege by any Department or agency, or executive official thereof, upon the ground that he is not a national of the United States, such person regardless of whether he is within the United States or abroad, may institute an action against the head of such Department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such person claims a permanent residence for a judgment declaring him to be a national of the United States. If such person is outside the United States, and shall have instituted such an action in court, he may, upon submission of a sworn application showing that the claim of nationality presented in such action is made in good faith and has a substantial basis, obtain from a diplomatic or consular officer of the United States in the foreign country in which he is residing a certificate of identity stating that his nationality status is pending before the court, and may be admitted to the United States with such certificate upon the

IMMIGRATION AND NATIONALITY ACT

condition that he shall be subject to deportation in case it shall be decided by the court that he is not a national of the United States. Such certificate of identity shall not be denied solely on the ground that such person has lost a status previously had or acquired as a national of the United States; and from any denial of an application for such certificate the applicant shall be entitled to an appeal to the Secretary of State, who, if he approves the denial, shall state in writing the reasons for his decision. The Secretary of State, with approval of the Attorney General, shall prescribe rules and regulations for the issuance of certificates of identity as above provided.

§ 50.46 *Application for certificate of identity*—(a) *What application shall show.* The application for a certificate of identity shall show:

- (1) The full and true name of the applicant;
- (2) The place of his residence outside the United States;
- (3) That he claims to be a national of the United States, and the basis of such claim and evidence submitted in support thereof;
- (4) That such claim is made in good faith and upon a substantial basis;
- (5) That he claims a right or privilege as a national of the United States, and specifically the nature of such claim;
- (6) That such right or privilege has been denied him by a specified department or agency or executive official of the United States on the ground that the applicant is not a national of the United States, and the date and place of such denial;
- (7) That an action for a judgment declaring applicant to be a national of the United States has been instituted by him against the head of such department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the specified district in which he claims permanent residence;
- (8) That such action was instituted in good faith with the intention of prosecuting it to conclusion and is pending in such court;
- (9) That he desires to proceed to the United States to prosecute such action;
- (10) That, if granted a certificate of identity and admitted to the United States for the purpose of prosecuting such action, he will do so with due diligence;
- (11) That he understands that admission to the United States upon such certificate of identity shall be under regulations prescribed by the Immigration and Naturalization Service, and upon the condi-

SUPPLEMENT

tion that he shall be subject to deportation if the final outcome of such court action is not to the effect that he is a national of the United States and if he then fails to depart therefrom without delay in accordance with directions from the Immigration and Naturalization Service; and

(12) Such other facts and proofs, with respect to the foregoing, as may be required by the application form or by the diplomatic or consular officer before whom the application for a certificate of identity is executed.

(b) *Supporting witness.* The application for a certificate of identity shall be supported by the affidavit of a credible witness, but this requirement may be waived in the discretion of the officer before whom the application is executed.

(c) *Form and execution.* The application for a certificate of identity shall be made in quadruplicate on an approved form and shall be signed and sworn to (or affirmed) by the applicant in person before a diplomatic or consular officer of the United States. The affidavit of the witness, if not waived, shall also be made before a diplomatic or consular officer of the United States. The application shall be accompanied by four photographs of the applicant taken within thirty days of the date on which the application is filed. The photographs shall be 2 by 2 inches in size, unmounted, printed on thin paper, have a light background, and clearly show a full front view of the features of the applicant (with head bare, unless the applicant is a member of a religious order wearing a headdress), with the distance from the top of head to point of chin approximately $1\frac{1}{4}$ inches. Snapshot, group, or full length pictures will not be accepted. The applicant, except in the case of a person physically or otherwise incapable of signing his name, shall sign each copy of the photograph with his full, true name in such manner as not to obscure the features. The signature shall be by mark if the applicant is unable to write. One photograph shall be glued to the original application and one to each copy thereof and impressed with the legend machine so as not to cover the features. Officers not having a legend machine will use the impression seal. The consular impression seal should invariably be used in completing the application. Fingerprints of the applicant shall be required and attached to the application and each copy thereof, as in the case of a visa.

§ 50.47 *Independent investigation.* When an application for a certificate of identity is executed before a diplomatic or consular officer, an independent investigation of the facts in the case should be made, as far as practicable, by such officer, even though the appli-

IMMIGRATION AND NATIONALITY ACT

cation and proofs submitted therewith may on their face appear to justify issuance of a certificate of identity.

§ 50.48 Good faith and substantial basis of claim of United States nationality—(a) *Relationship to provision concerning loss of nationality.* The provision in section 503 of the Nationality Act of 1940 that a certificate of identity shall not be denied “solely on the ground that such person has lost a status previously had or acquired as a national of the United States” is to be read with the provision of the section that the claim of nationality presented in the court action be made in good faith and have a substantial basis.

(b) *Meaning of good faith.* Good faith means an honest belief of the applicant that he is a national of the United States, and is to be determined by the diplomatic or consular officer of the United States in the light of the facts and circumstances of each case. For example, where it appears that United States nationality has been lost by naturalization of the person upon his own application in a foreign state, good faith would appear to be lacking in the absence of a satisfactory showing to the contrary. Special care should be taken in the examination of the case of an applicant who, while in a foreign state, has exercised any rights or performed any duties for which only nationals of such state are eligible.

(c) *Meaning of substantial basis.* A substantial basis of a claim of United States nationality means one which satisfies the diplomatic or consular officer of the United States at the claim of the applicant that he is a national of the United States is, notwithstanding any previous ruling of a department, agency, or executive official of the United States, sufficiently meritorious to justify resort to the court for a determination of the question.

§ 50.49 Denial of a right or privilege as a national of the United States. Denial by a department or agency or executive official of the United States of a right or privilege as a national of the United States may have occurred in the administration of various laws. For example, it may have occurred where a person applied as a national of the United States for a passport or for registration at an American consulate or for nonquota status as an alien wife or alien minor child of an American citizen under sections 4 and 9 of the Immigration Act of 1924, and the application was denied on the ground that the applicant was not a national of the United States.

§ 50.50 Proof of institution of action. Proof that the applicant has instituted an action referred to in § 50.46 is best made by presentation of a duly certified copy of the complaint filed in the action. The presentation of such a copy may be waived only when other

SUPPLEMENT

evidence is furnished which satisfactorily establishes that the suit has been instituted and is pending.

§ 50.51 *In case of doubt as to issuance of certificate of identity.* Where it appears that the presence of the applicant in the United States would endanger the public safety or where the diplomatic or consular officer believes that the applicant is a national of the United States and entitled to a passport as such or where the diplomatic or consular officer has any doubt with respect to the action he should take upon the application for a certificate of identity, the officer should suspend action and consult the Department of State.

§ 50.52 *Form and issuance of certificate of identity.* The certificate of identity shall be issued on the approved form, printed upon the application form. It shall be signed and sealed by the diplomatic or consular officer, who shall state on the original and each copy thereof the date and place of issuance. The three copies shall be marked "copy." One copy and any documentary evidence submitted by the applicant shall be retained in the files of the issuing office, and two copies sent to the Department of State, one of which shall be forwarded to the Central Office, Immigration and Naturalization Service, Department of Justice.

§ 50.53 *Period of validity of certificate of identity.* A certificate of identity shall expire six months from the date of its issuance, unless extended by direction of the Secretary of State.

§ 50.54 *Denial of certificate of identity.* In case the certificate of identity is denied by a diplomatic or consular officer, a notation to that effect shall be made by him in the space provided therefor at the end of the original application and on each copy thereof. The notation shall set forth definitely the grounds for the denial. The original application and any documentary evidence submitted by the applicant shall be retained in the files of the office to which the application was submitted. One copy shall be returned to the applicant, and two copies shall be sent to the Department of State, one of which shall be forwarded to the Central Office, Immigration and Naturalization Service, Department of Justice.

§ 50.55 *Appeal by applicant.* When an applicant is denied a certificate of identity, he may appeal by a written statement to the Secretary of State, setting forth fully the pertinent facts and the grounds upon which United States nationality is claimed and his reasons for considering that the denial of his application by the diplomatic or consular officer is not justified. The statement shall be executed in quadruplicate and submitted to the diplomatic or consular office in which the denial was made. If the statement contains facts not set

IMMIGRATION AND NATIONALITY ACT

forth in the application it shall be sworn to (or affirmed) by the applicant before a diplomatic or consular officer of the United States. The original statement and one copy shall be forwarded by the diplomatic or consular officer to the Department of State with two copies of the application for the certificate of identity and any documentary evidence submitted by the applicant, if the copies have not already been sent to that Department. One copy of the statement shall be retained in the files of the diplomatic or consular office in which the denial was made and one copy returned to the applicant. If it is not practicable for the statement to be sworn to or affirmed by the applicant in the diplomatic or consular office in which the denial was made, it may be sworn to or affirmed in any other diplomatic or consular office of the United States. In such case, the original and two copies of the statement shall be forwarded by that office to the diplomatic or consular office in which the application was denied, but if that is not practicable they shall be sent directly to the Department of State. One copy shall be returned to the applicant.

§ 50.56 Certificate of identity obtained by fraud or other illegality. Whenever a certificate of identity is found by a diplomatic or consular officer of the United States to have been obtained by fraud or other illegality, or to be in the possession of a person other than the rightful holder, such officer shall, if practicable, obtain possession of the certificate and send it, together with a report on the matter, directly to the Department of State.

§ 50.57 Repeal of section 503, and savings clause. Section 503 of the Nationality Act of 1940 was repealed by section 403 (a) (42) of the Immigration and Nationality Act of 1952. However, section 405 (a) of that act provides in part as follows:

Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by his Act are, unless otherwise specifically provided therein, hereby continued in force and effect.

SUPPLEMENT

PART 51

DEPARTMENT OF STATE

Limitations on issuance of passports to persons supporting Communist movement. In order to promote the national interest by assuring that persons who support the world Communist movement of which the Communist Party is an integral unit may not through use of United States passports, further the purposes of that movement, no passport, except one limited for direct and immediate return to the United States, shall be issued to:

- (a) Persons who are members of the Communist Party or who have recently terminated such membership under such circumstances as to warrant the conclusion—not otherwise rebutted by the evidence—that they continue to act in furtherance of the interests and under the discipline of the Communist Party;
- (b) Persons, regardless of the formal state of their affiliation with the Communist Party, who engage in activities which support the Communist movement under such circumstances as to warrant the conclusion—not otherwise rebutted by the evidence—that they have engaged in such activities as a result of direction, domination, or control exercised over them by the Communist movement;
- (c) Persons, regardless of the formal state of their affiliation with the Communist Party, as to whom there is reason to believe, on the balance of all the evidence, that they are going abroad to engage in activities which will advance the Communist movement for the purpose, knowingly and wilfully of advancing that movement.

BOARD OF PASSPORT APPEALS

§ 51.151 *Organization of Board.* The Secretary of State shall appoint a Board of Passport Appeals consisting of three or more members, one of whom shall be designated by the Secretary as Chairman. The Chairman shall assure that there is assigned to hear the appeal of any applicant a panel of not less than three members including himself or his designee as presiding officer, which number shall constitute a quorum.

§ 51.152 *Decisions of the Board.* Decisions shall be by a majority vote. Voting may be either in open or closed session on any question except recommendations under § 51.140, which shall be in closed session. Decisions under § 51.140 shall be in writing and shall be signed by all participating members of the Board.

§ 51.153 *Counsel to the Board.* A Counsel, to be designated by the Secretary of State, shall be responsible to the Board for the scheduling and presentation of cases, aid in legal and procedural matters,

IMMIGRATION AND NATIONALITY ACT

information to the applicant as to his procedural rights before the Board, maintenance of records and such other duties as the Board or the Chairman, on its behalf, may determine.

§ 51.154 *Examiner.* The Board may, within its discretion, appoint an examiner in any case, who may, with respect to such case, be vested with any or all authority vested in the Board or its presiding officer, subject to review and final decision by the Board, but, an applicant shall not be denied an opportunity for a hearing before the Board unless he expressly waives it.

§ 51.155 *Chairman.* The Chairman, or his designee, shall preside at all hearings of the Board, and shall be empowered in all respects to regulate the course of the hearings and pass upon all issues relating thereto. The Chairman, or his designee, shall be empowered to administer oaths and affirmations.

§ 51.156 *Prior administrative remedies.* It is required that prior to petitioning for an appeal, an applicant shall (a) exhaust the administrative remedies available in the Passport Office, as set out in § 51.137, and (b) comply with the provisions of § 51.142, as a part of his application, if deemed necessary by the Passport Office.

§ 51.157 *Petition.* An applicant desiring to take an appeal shall, within thirty calendar days after receipt of the advice of adverse decision by the Passport Office file with the Board a written petition under oath or affirmation which shall, in plain and concise language, refute or explain the reasons stated by the Passport Office for its decision.

§ 51.158 *Delivery of papers.* Petitions or other papers for the attention of the Board may be delivered personally, by registered mail, or by leaving a copy at the offices of the Board at the address to be stated in the advice of adverse action furnished applicant by the Passport Office.

§ 51.159 *Notice of hearing.* Applicant shall receive not less than five calendar days notice in writing of the scheduled date and place of hearing which shall be set for a time as soon as possible after receipt by the Board of applicant's petition.

§ 51.160 *Appearance.* Any party to any proceedings before the Board may appear in person, or by or with his attorney, who must possess the requisite qualifications, as hereinafter set forth, to practice before the Board.

§ 51.161 *Applicant's attorney.* (a) Attorneys at law in good standing who are admitted to practice before the Federal courts or

SUPPLEMENT

before the courts of any State or Territory of the United States may practice before the Board.

(b) No officer or employee of the Department of State whose official duties have, in fact, included participation in the investigation, preparation, presentation, decision or review of cases of the class within the competence of the Board of Passport Appeals shall, within two (2) years after the termination of such duties appear as attorney in behalf of an applicant in any case of such nature, nor shall any one appear as such attorney in a case of such class if in the course of prior government service he has dealt with any aspects of the applicant's activities relevant to a determination of that case.

§ 51.166 *Privacy of hearings.* Hearings shall be private. There shall be present at the hearing only the members of the Board, Board's Counsel, official stenographers, Departmental employees concerned, the applicant, his counsel, and the witnesses. Witnesses shall be present at the hearing only while actually giving testimony.

§ 51.167 *Misbehavior before Board.* If, in the course of a hearing before the Board, an applicant or attorney is guilty of misbehavior, he may be excluded from further participation in the hearing. In addition, he may be excluded from participation in any other case before the Board.

§ 51.168 *Transcript of hearings.* A complete verbatim stenographic transcript shall be made of hearings by qualified reporters, and the transcript shall constitute a permanent part of the record. Upon request, the applicant and each witness shall have the right to inspect the transcript of his own testimony.

§ 51.169 *Notice of decision.* The Board shall communicate the action recommended under § 51.140 on all cases appealed to it, to the Secretary of State. The decision of the Secretary of State shall be notified in writing to the applicant. Such notice shall be given the applicant as promptly as possible after his hearing before the Board.

§ 51.170 *Probative value of evidence.* In determining whether there is a preponderance of evidence supporting the denial of a passport the Board shall consider the entire record, including the transcript of the hearing and such confidential information as it may have in its possession. The Board shall take into consideration the inability of the applicant to meet information of which he has not been advised, specifically or in detail, or to attack the creditability of confidential informants.

IMMIGRATION AND NATIONALITY ACT

PART 52

PART 52—BIRTHS AND MARRIAGES

Sec.

- 52.1 Registration of births.
- 52.2 Celebration of marriage.
- 52.3 Acting as official witness at marriage ceremonies.
- 52.4 Certificate of Witness to Marriage.
- 52.5 Authentication of marriage and divorce documents.
- 52.6 Certification to marriage laws.

§ 52.1 *Registration of births.* Consular officers are required, upon application, to record the birth abroad of children who are American citizens. They should impress upon American citizens resident in their respective districts the desirability and importance of a prompt registration of such births. No fee shall be charged for the registration of a birth and the furnishing to the parents of one copy of the completed form. Charges for additional copies are as prescribed in the Schedule of Fees (§ 21.1 of this chapter) or in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

§ 52.2 *Celebration of marriage.* Foreign Service officers are forbidden to celebrate marriages.

§ 52.3 *Acting as official witness at marriage ceremonies—(a) Diplomatic representative not empowered to act as official witness.* A diplomatic representative is not empowered to act as an official witness at a marriage ceremony.

(b) *Consular officer authorized to act as official witness.* A consular officer may, when requested, act as an official witness at a marriage ceremony (see 22 U. S. C. 72), provided that one of the contracting parties is a citizen of the United States and provided the consular officer has assured himself that the requirements of the law at the place of celebration have been complied with as far as practicable. While it is not intended to modify in any way the principle of international law that the form of celebrating marriage is determined ordinarily by the law of the place of celebration, the following exceptions are recognized:

- (1) When it is impossible to use such form;
- (2) When it is repugnant to the religious convictions of the parties;
- (3) When it is not imposed on foreigners by the sovereign prescribing it;
- (4) When the ceremony is performed in a non-Christian or semi-civilized country. (See 7 Op. Atty. Gen. 18.)

§ 52.4 *Certificate of Witness to Marriage.* Whenever a consular officer witnesses a ceremony of marriage, he shall complete in every

SUPPLEMENT

detail Form No. 87, Certificate of Witness to Marriage, affix thereto the seal of the consulate, certify that the marriage took place in his presence, and sign such certificate. (See 22 U. S. C. 72.)

§ 52.5 *Authentication of marriage and divorce documents.* Whenever a consular officer is requested to authenticate the signature of local authorities on a document of marriage when he was not a witness to the marriage, he shall include in the body of his certificate of authentication the qualifying statement, "For the contents of the annexed document, the Consulate (General) assumes no responsibility."

The same statement shall be included in certificates of authentication accompanying decrees of divorce.

§ 52.6 *Certification to marriage laws.* Although a consular officer may have knowledge respecting the laws of marriage, he shall not issue any official certificate as to such laws.

PART 53

PART 53—TRAVEL CONTROL OF CITIZENS AND NATIONALS IN TIME OF WAR OR NATIONAL EMERGENCY

AMERICAN CITIZENS AND NATIONALS

Sec.

- 53.1 Definition of the term "United States".
- 53.2 Limitations upon travel.
- 53.3 Exceptions to regulations in § 53.2.
- 53.4 Persons considered as bearing passports.
- 53.5 Prevention of departure from or entry into the United States.
- 53.6 Attempt of a citizen or national to enter without a valid passport.
- 53.7 Optional use of a valid passport.
- 53.8 Discretionary exercise of authority in passport matters.

§ 53.1 *Definition of the term "United States."* The term "United States" as used in this part includes the Canal Zone, and all territory and waters, continental or insular, subject to the jurisdiction of the United States.

§ 53.2 *Limitations upon travel.* No citizen of the United States or person who owes allegiance to the United States shall depart from or enter into or attempt to depart from or enter into any part of the United States as defined in § 53.1, unless he bears a valid passport which has been issued by or under authority of the Secretary of State or unless he comes within one of the exceptions prescribed in § 53.3.

§ 53.3 *Exceptions to regulations in § 53.2.* No valid passport shall be required of a citizen of the United States or of a person who owes allegiance to the United States:

IMMIGRATION AND NATIONALITY ACT

- (a) When traveling between the continental United States and the Territory of Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands and Guam, or between any such places; or
- (b) When traveling between the United States and any country or territory in North Central, or South America or in any island adjacent thereto: *Provided*, That this exception shall not be applicable to any such person when traveling to or arriving from a place outside the United States for which a valid passport is required under this part, if such travel is accomplished via any country or territory in North, Central, or South America or any island adjacent thereto: *And provided also*, That this section shall not be applicable to any seaman except as provided in paragraph (c) of this section; or
- (c) When departing from or entering the United States in pursuit of the vocation of seaman: *Provided*, That the person is in possession of a specially validated United States merchant mariner's document issued by the United States Coast Guard; or
- (d) When departing from or entering into the United States as an officer or member of the enlisted personnel of the United States Army or the United States Navy on a vessel operated by the United States Army or the United States Navy; or
- (e) When traveling as a member of the Armed Forces of the United States or a civil employee of the Department of Defense between the continental United States, the Canal Zone, and all territories, continental or insular, subject to the jurisdiction of the United States, and any foreign country or territory for which a valid passport is required under the regulations in this part: *Provided*, That he is in possession of a document of identification issued for such purposes by the Department of Defense; or
- (f) When traveling as an air crewman on board an American aircraft which is engaged in commercial air-transport service for the carriages of goods, passengers, or mail between the United States and a foreign country: *Provided*, That he is in possession of an identification card issued by the Civil Aeronautics Board which complies with the International Civil Aviation Organization requirements; or
- (g) When specifically authorized by the Secretary of State, through the appropriate official channels, to depart from or enter into the United States, as defined in § 53.1.

§ 53.4 *Persons considered as bearing passports.* Every citizen of the United States, or person who owes allegiance to the United States, who is included in a valid passport issued by or under authority of the Secretary of State shall for the purpose of the rules and regulations in this part be considered as bearing a separate valid passport if such

SUPPLEMENT

passport is presented to the appropriate official at the time he departs from or enters into or attempts to depart from or enter into any territory of the United States as defined in § 53.1.

§ 53.5 Prevention of departure from or entry into the United States. (a) Nothing in this part shall be construed as prohibiting the Secretary of State or his representative at a port in the United States from preventing the departure from or entry into the United States, as defined in § 53.1, of a citizen of the United States or a person who owes allegiance to the United States, unless he bears a passport, card of identification, or other document of identity issued by or under authority of the Secretary of State, notwithstanding the fact he may be destined for or arriving from a place outside any such territory of the United States for which a valid passport is not required under the regulations in this part.

(b) Nor shall anything in the regulations in this part be construed as prohibiting the Secretary of State or his representative at a port in the United States from preventing temporarily the departure from or entry into the United States, as defined in § 53.1, of a citizen of the United States or a person who owes allegiance to the United States, notwithstanding the fact that such person may bear a valid passport, card of identification, or other document of identity issued by or under authority of the Secretary of State or be destined for or arriving from a place outside any such territory of the United States for which a valid passport is not required under the regulations in this part.

§ 53.6 Attempt of a citizen or national to enter without a valid passport. If any person who alleges that he is a citizen of the United States or a person who owes allegiance to the United States attempts to enter the United States contrary to the provisions of the regulations in this part, the appropriate officer of the United States at the port at which the attempt is made to enter the United States, if satisfied that such person is a citizen of the United States or a person who owes allegiance to the United States, shall detain such person and immediately report the facts in the case to the Secretary of State and await his instructions.

§ 53.7 Optional use of a valid passport. Nothing in this part shall be construed to prevent the use of a valid passport by any citizen of the United States, or a person who owes allegiance to the United States, in a case in which a passport is not required by this part.

§ 53.8 Discretionary exercise of authority in passport matters. Nothing in this part shall be construed to prevent the Secretary of State from exercising the discretion resting in him to refuse to issue

IMMIGRATION AND NATIONALITY ACT

a passport, to restrict its use to certain countries, to withdraw or cancel a passport already issued, or to withdraw a passport for the purpose of restricting its validity or use in certain countries.

PART 214k—ADMISSION OF AGRICULTURAL WORKERS UNDER SPECIAL LEGISLATION

AMENDING PART 475; SEE PAGE 515 OF PARENT BOOK

Sec.

- 214k.1 Definitions.
- 214k.2 Period for which admitted.
- 214k.3 Conditions of admission.
- 214k.4 Compliance by employer.
- 214k.5 Extension of stay; conditions.
- 214k.6 Readmission after temporary visits to Mexico.
- 214k.7 Previous removal, deportation; permission to reapply.
- 214k.8 Arrest and deportation of agricultural workers.
- 214k.21 Recruitment centers; preliminary inspection.
- 214k.22 Immigration inspection at reception centers.
- 214k.23 Recontracting in the United States.
- 214k.24 Duplicate identification cards.
- 214k.5I Extension of period of admission.

§ 214k.1 *Definitions.* As used in this part:

(a) The term "agricultural worker" means a native-born citizen of Mexico who is and has been a bona fide resident of Mexico for at least one year immediately preceding the date of application for admission and who seeks to enter the United States temporarily under the provisions of Title V of the Agricultural Act of 1949, as amended (63 Stat. 1051, Pub. Law 78, 82d Cong.), for the sole purpose of engaging in agricultural employment as defined in this section, and who is legally admitted to the United States for temporary employment in agriculture in accordance with the terms of the Migrant Labor Agreement of 1951, as amended, entered into between the Governments of the United States and Mexico.

(b) The term "agricultural employment" means:

(1) Cultivation and tillage of the soil, planting, production, cultivation, growing, and harvesting of any agricultural or horticultural commodities and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage, or to market, or to a carrier for transportation to market; or

(2) The maintenance of a farm and its tools and equipment, or salvaging of timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm; or

SUPPLEMENT

(3) The maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit and used exclusively for supplying or storing water for farming purposes, and cotton ginning; or

(4) Handling, drying, packing, packaging, processing, freezing, grading or storing, in its unmanufactured state any agricultural or horticultural commodity for the operator of a farm; but only if such operator produced more than one-half of the commodity with respect to which the service is performed; or

(5) All of the activities described in subparagraph (4) of this paragraph for a group of operators of farms but only if such operators produced the commodities with respect to which such activities are performed: *Provided*, That the provisions of this subparagraph and subparagraph (4) of this paragraph shall not be applicable with respect to services performed in connection with commercial canning or commercial freezing, or in connection with any agricultural or horticultural commodities, after their delivery to a terminal market for distribution or consumption.

(c) The term "employer" means:

(1) The operator of agricultural property who is engaged in agricultural employment, as defined in this section;

(2) An association or other group of employees but only if those of its members for whom Mexican workers are being obtained are bound, in the event of its default, to carry out the obligations undertaken by it pursuant to the provisions of the Migrant Labor Agreement of 1951, as amended, unless the Secretary of Labor of the United States determines that such individual liability is not necessary to assure performance of such obligations; or

(3) A processor, shipper or marketer of agricultural products when the Mexican workers whom he obtains are employed by him in agriculture or crops purchased by him.

§ 214k.2 *Period for which admitted.* An agricultural worker may be admitted to the United States temporarily as a nonimmigrant pursuant to the provisions of Title V of the Agricultural Act of 1949, as amended, *Provided*:

(a) That the initial period of admission shall be for not less than four weeks and not more than six months. The initial period of admission or any extension thereof shall not extend beyond June 30, 1959;

(b) That no maintenance-of-status or departure bond shall be required; and

(c) That the period of temporary admission shall be subject to immediate revocation, without notice, by the district director of the

IMMIGRATION AND NATIONALITY ACT

district having jurisdiction over the place of the alien's employment upon:

- (1) Failure of the agricultural worker to maintain his status as such by accepting any employment or engaging in any activities not specifically authorized at the time of his recruitment and temporary admission;
- (2) Withdrawal of the employer's certification because of violation of Title V of the Agricultural Act of 1949, as amended, or the Migrant Labor Agreement of 1951, as amended, or individual work contract made thereunder, as specified in § 214k.4 (b); or
- (3) Determination and notification by the Secretary of Labor that sufficient domestic workers who are able, willing, and qualified are available at the time and place needed to perform the work for which such workers are employed, or that the employment of such workers is adversely affecting the wages and working conditions of domestic agricultural workers similarly employed, or that reasonable efforts have not been made to attract domestic workers for such employment at wages and standard hours of work comparable to those offered to foreign workers; or
- (4) Termination of the Migrant Labor Agreement of 1951, as amended.

§ 214k.3 *Conditions of admission.* Any alien who applies for admission into the United States under the provisions of Title V of the Agricultural Act of 1949, as amended, and the provisions of this part, must:

- (a) Establish that he is an agricultural worker as defined in § 214k.1 (a);
- (b) Establish that he is in all respects admissible under the provisions of the immigration laws;
- (c) Have been regularly recruited by the Secretary of Labor as an agricultural worker;
- (d) Comply with and continue to fulfill all of the terms, conditions, and requirements of his individual work contract;
- (e) At all times carry with him and have in his personal possession the Form I-100 issued to him at the time of his admission, pursuant to § 214k.22 (a); and
- (f) Establish to the satisfaction of the examining immigration officer that, if admitted, he will comply with all of the conditions of such admission.

§ 214k.4 *Compliance by employer.* (a) No agricultural workers shall be made available to, nor shall any such workers made available

SUPPLEMENT

be permitted to remain in the employ of, any employer who has in his employ any Mexican alien when such employer knows or has reasonable grounds to believe or suspect or by reasonable inquiry could have ascertained that such Mexican alien is not lawfully within the United States. Whenever it shall appear that a Mexican alien not lawfully in the United States is so employed, an investigation shall be made and a report submitted to the district director having jurisdiction over the place of the alien's employment. If the district director determines that the employer has employed such Mexican aliens in violation of this section, he may require that other agricultural workers be removed from said place of employment, either by transfer to an eligible employer or by return to Mexico.

(b) Upon notification from the Secretary of Labor that an employer fails or refuses to comply with the provision of Title V of the Agricultural Act of 1949, as amended, or the Migrant Labor Agreement of 1951, as amended, or individual work contract made thereunder, the temporary admission of all agricultural workers employed by such employer may be revoked in the same manner as provided in § 214k.2 (e).

(c) If a Mexican agricultural worker leaves his employment without proper authorization, the employer shall report such departure immediately or within five days thereof to the immigration officer in charge of the reception center where the worker was admitted. Such notification shall contain the individual worker's name, as shown in the employer's copy of the contract; the worker's Form I-100C number; the date the worker left the employer, and the present whereabouts of the worker, if known.

§ 214k.5 Extension of stay; conditions. After an alien has been admitted to the United States as an agricultural worker under the provisions of this part or of prior regulations pertaining to Title V of the Agricultural Act of 1949, as amended, he may be granted an extension or extensions of the period of his temporary admission by the district director or the officer in charge of the suboffice having jurisdiction over the place of the alien's employment, subject to the same limitations as are placed on original admission by § 214k.2.

§ 214k.6 Readmission after temporary visits to Mexico. (a) An agricultural worker who has been admitted to the United States under the provisions of this part or of prior regulations pertaining to Title V of the Agricultural Act of 1949, as amended, may be readmitted after temporary visits to Mexico on presentation of Form I-100C, Alien Laborer's Permit, if he is still maintaining the status of an agricultural worker in the United States.

IMMIGRATION AND NATIONALITY ACT

(b) An agricultural worker who is granted a furlough which is for more than 15 days, or will take place during the last 15 days of a six-week contract, or will take place during the last 30 days of a contract of more than six weeks, shall be furnished with a letter by the employer stating the time for which the furlough is granted and that contractual obligations will be reassumed upon his return to his employment after furlough. The letter shall be appropriately endorsed to show approval of the furlough by a representative of the United States Employment Service and the appropriate Mexican Consul.

§ 214k.7 *Previous removal, deportation; permission to reapply.* An alien who establishes that he is in all respects entitled to admission as an agricultural worker under the provisions of this part, except that he has been previously removed at Government expense pursuant to section 242 (b) of the act or excluded or arrested and deported solely because of illegal entry or absence of required documents, is hereby granted permission to reapply for admission to the United States as an agricultural worker.

§ 214k.8 *Arrest and deportation of agricultural workers.* (a) An alien admitted to the United States as an agricultural worker shall be deemed to have failed to maintain his nonimmigrant status within the meaning of section 241 (a) (9) of the Immigration and Nationality Act if:

(1) He remains in the United States after the expiration of the time for which he was temporarily admitted or after the expiration of any authorized extension of such period; or

(2) He violates or fails to fulfill any of the other conditions of his admission to or extended stay in the United States; or

(3) He evidences orally or in writing or by conduct an intention to violate or to fail to fulfill any of the conditions of his temporary admission to or extended stay in the United States; or

(4) He remains in the United States after the period of his temporary admission or extended stay is revoked pursuant to § 214k.2 (c).

(b) Any alien to whom paragraph (a) of this section is applicable shall be subject to being taken into custody and made the subject of further proceedings under the applicable provisions of the Immigration and Nationality Act and the regulations in this chapter.

§ 214k.21 *Recruitment centers; preliminary inspection.* To the extent possible under the circumstances, all immigration inspections and medical examinations of the agricultural workers at recruitment centers in Mexico shall be similar to those regularly conducted at ports of entry on the border. If the immigration officer at the recruit-

SUPPLEMENT

ment center in Mexico determines that the alien is admissible as an agricultural worker he shall so note and initial the conditional permit which is issued to the alien by the Secretary of Labor when the alien is recruited. Such endorsement shall not be construed as a guarantee that the alien will be admitted to the United States nor shall the alien be entitled to accept employment in the United States unless and until he has been issued Form I-100C as prescribed in § 214k.22. Aliens whose conditional permits have been noted by immigration officers shall be conveyed directly from the recruitment center to a reception center at or near a port of entry under the supervision of representatives of the Secretary of Labor for completion of immigration inspection. The conveyance of an agricultural worker to a reception center shall not constitute an admission to the United States. Such alien shall be considered to have been admitted to the United States only after he has been inspected and issued Form I-100C as prescribed in § 214k.22. If the immigration officer at the recruitment center in Mexico determines that the alien is inadmissible as an agricultural worker, he shall refuse to note the alien's conditional permit and such decision by the immigration officer shall not be subject to appeal to a special inquiry officer.

§ 214k.22 Immigration inspection at reception centers—(a) Authority to admit. An alien who presents a conditional permit, as described in § 214k.21, duly noted by an immigration officer at a recruitment center, may be admitted at the reception center if he is found admissible by the examining immigration officer. The examining officer shall fingerprint each alien admitted. The alien shall be given the Form I-100C bearing his photograph and stating his name and place of birth. Such form shall be duly noted by an immigration officer to show the date, place, and period of the alien's admission to the United States and shall be signed by such officer across the photograph. Such noted card shall be the sole document required for admission to the United States as an agricultural worker under this part.

(b) Hearing before special inquiry officer. If the examining immigration officer is not satisfied that an alien seeking admission under this part is admissible, the alien shall be held for hearing before a special inquiry officer, and the hearing procedure applicable generally to aliens seeking admission to the United States under the immigration laws shall be followed: *Provided, however,* That the case of an alien believed to be inadmissible to the United States under the provisions of paragraph (27), (28), or (29) of section 212 (a) of the Immigration and Nationality Act shall be handled in accordance with the provisions of section 235 (c) of that act and § 235.8 of this chapter.

IMMIGRATION AND NATIONALITY ACT

§ 214k.23 *Recontracting in the United States.* During the period for which he is admitted, or any authorized extension thereto, an agricultural worker may be recontracted by another employer. When an agricultural worker is recontracted, his Form I-100C shall be appropriately noted and the admitting reception center notified.

§ 214k.24 *Duplicate identification cards.* A duplicate Form I-100C may be issued by the admitting reception center when the original has been lost, mutilated, or destroyed. An application for such a card shall be made on Form I-102.

§ 214k.51 *Extension of period of admission.* Extension of the temporary admission of an alien admitted to the United States as an agricultural worker under Title V of the Agricultural Act of 1949, as amended, and regulations pursuant thereto or under this part may be granted by the district director or the officer in charge of the sub-office having jurisdiction over the place of the alien's employment only upon determination and certification by the Secretary of Labor that:

(a) Sufficient domestic workers who are able, willing, and qualified are not available at the time and place needed to perform the work for which such workers are to be employed;

(b) The employment of such workers will not adversely affect the wages and working conditions of domestic agricultural workers similarly employed; and

(c) Reasonable efforts have been made to attract domestic workers for such employment at wages and standard hours of work comparable to those offered to foreign workers.

Public Law 85-892
85th Congress, S. 3942
September 2, 1958

AN ACT

For the relief of certain distressed aliens.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of any other law, there are hereby authorized to be issued (A) fifteen hundred special nonquota immigrant visas to aliens, specified in section 2 of this Act, and (B) a number of special non-quota immigrant visas not to exceed the annual quota allocated under the Immigration and Nationality Act to the quota area of the Netherlands to aliens specified in section 3 of this Act seeking to enter the United States as immigrants. The spouse of any such alien and his unmarried sons or daughters under twenty-one years of age, including stepsons or stepdaughters, and sons or daughters adopted prior to

SUPPLEMENT

July 1, 1958, if accompanying them, may be issued special nonquota immigrant visas notwithstanding the numerical limitations herein provided.

Sec. 2. Visas authorized to be issued under clause (A) of section 1 of this Act shall be issued only to nationals or citizens of Portugal who, because of natural calamity in the Azores Islands subsequent to September 1, 1957, are out of their usual place of abode in such islands and unable to return thereto, and who are in urgent need of assistance for the essentials of life.

Sec. 3. Visas authorized to be issued under clause (B) of section 1 of this Act shall be issued only to nationals or citizens of the Netherlands who have been displaced from their usual place of abode in the Republic of Indonesia subsequent to January 1, 1949, and who were residing in continental Netherlands on the enactment date of this Act.

Sec. 4. Visas authorized to be issued under this Act may be issued by consular officers as defined in the Immigration and Nationality Act in accordance with the provisions of section 221 of that Act: *Provided*, That each such alien is found to be eligible to be issued an immigrant visa and to be admitted to the United States under the provisions of the Immigration and Nationality Act: *Provided further*, That a quota number is not available to such alien at the time of his application for a visa.

Sec. 5. Aliens receiving visas under clause (A) of section 1 of this Act shall be exempt from paying the fees prescribed in paragraphs (1) and (2) of section 281 of the Immigration and Nationality Act.

Sec. 6. Except as otherwise specifically provided in this Act, the definitions contained in section 101 (a) and (b) of the Immigration and Nationality Act shall apply in the administration of this Act.

Sec. 7. No special nonquota immigrant visa shall be issued under this Act after June 30, 1960.

Approved September 2, 1958.

